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Supreme Court of the United States
OCTOBER TERM, 1980

UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, AFL-CIO, *et al.*,
Petitioners,

v.

LOCAL 334, UNITED ASSOCIATION ETC., *et al.*,
Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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QUESTION PRESENTED

Section 301(a) of the Labor Management Relations Act of 1947 grants the United States district courts jurisdiction over "Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce . . . or between any such labor organizations."

The question presented is whether, as the Court below held, this provision excludes a suit by a local union against its International union alleging that the latter has violated its Constitution by issuing a consolidation order which changed the identity of the local unions representing employees in collective bargaining with employers.*

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* In addition to the United Association and Local 334, the other parties to the proceedings below were United Association Locals 49, 523, 124, 84, 14 and 274.

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IN THE

Supreme Court of the United States

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No. ———

UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, AFL-CIO, *et al.*,
Petitioners,

v.

LOCAL 334, UNITED ASSOCIATION ETC., *et al.*,
Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Petitioners, the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO and its Locals 14 and 274, petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit, entered on August 4, 1980, which vacated a judgment of the United States District Court for the District of New Jersey and remanded the case to the District Court with instructions to remand the case to the State court from which it had been removed.

OPINIONS BELOW

The opinion of the Court of Appeals is not yet reported. It is reproduced *infra* in Appendix ("App.") at pp. 1a-19a.

The opinion of the District Court was in the form of a Letter Opinion dated August 17, 1979 and is unreported. A copy appears *infra* (App. 20a-28a).

JURISDICTION

The judgment (App. 29a-30a) of the Court of Appeals was entered on August 4, 1980. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTE INVOLVED

Section 301(a) of the Labor-Management Relations Act of 1947, 61 Stat. 136 *et seq.*, 29 U.S.C. § 185(a), provides as follows:

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in the Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

STATEMENT OF THE CASE

Petitioner United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO (the "United Association") is an international labor organization representing employees in the construction industry. Until the events giving rise to this suit, Respondent Local 334 was one of the more than 550 local unions chartered by

and affiliated with the United Association. The terms of the relationship between the two labor organizations were established and governed by the United Association's Constitution, a document adopted and amended by action of the local union delegates to the United Association's regular conventions, held every five years.

Prior to 1977, there were twenty-seven local unions affiliated with the United Association in the State of New Jersey, including Local 334. Believing that this was far too many for the area involved, the United Association urged the locals to consolidate voluntarily. When they could not agree on a voluntary plan, the United Association proposed its own plan, under which Respondent Local 334 and eight other locals in the northern part of the State would be consolidated into two locals, one representing plumbers and the other representing pipefitters. Following a hearing on the proposed plan of consolidation conducted by a union hearing officer, the United Association, on August 4, 1977, issued an Order of Consolidation, which directed the nine northern New Jersey locals to consolidate in accordance with that plan. The Order was issued pursuant to Section 86 of the Constitution, which vests the United Association with the power to order local unions to consolidate in "one or more" locals when there is a superfluous number of locals in any locality and when, in the judgment of the United Association's General President, consolidation would be in the "best interest of the United Association, locally or at large" (App. 27a).

On August 22, 1977, Local 334 filed an action in the Superior Court of New Jersey, Chancery Division, Morris County, seeking to enjoin enforcement of the Order of Consolidation. The complaint alleged that the United Association had violated its Constitution in issuing that Order. The adverse effects allegedly resulting from the United Association's action in ordering the consolidation

were set forth at paragraphs 26-28 of Local 334's amended complaint:

> 26. At the present time plaintiffs have the exclusive contractual jurisdiction for all plumbing, pipefitting, metal trades and refrigeration work in Morris County, New Jersey. As such, plaintiff refers out its membership without distinction as to whether they bear a plumber membership card or a pipefitter membership card.
>
> 27. The present Order of Consolidation, unless stayed pending this litigation will result in deprivation of work opportunities for each member of plaintiff in that such members will thereafter be required to work under separate local unions which are divided along craft lines and therefore under separate referral lists as either a plumber or a pipefitter with no opportunity to interchange as is presently the case.
>
> 28. It is impossible to calculate the financial loss, therefore, to each member of plaintiff, since job referrals under the Order of Consolidation would be shared with members of two other local unions consolidated, as well as along craft lines. Moreover, each member of plaintiff will have to compete in the territory of Morris County with a large group of journeymen and will lose the advantage of their present positions on the out of work list of plaintiff. Therefore, there will be immediate and irreparable injury to the property rights of the members of plaintiff unless defendant is restrained and enjoined from disbanding Local 334 and enforcing the Order of Consolidation. Plaintiff itself will be required to surrender its assets to be divided between two local unions. Since a great portion of these assets consist of realty, a sale of that reality so as to conform with the division of assets will result in irreparable injury to plaintiff itself unless defendant is restrained

and enjoined from enforcing the Order of Consolidation.[1]

Asserting that federal jurisdiction existed under Section 301(a) of the Labor Management Relations Act, 29 U.S.C. § 185(a), the United Association timely removed the case pursuant to 28 U.S.C. § 1446 to the United States District Court for the District of New Jersey. Local 334 filed a motion to remand the case to state court, which the District Court denied from the bench after a hearing. Thereafter, several of the other locals involved in the consolidation were permitted to intervene, some supporting the consolidation and others opposing it.

In 1978, after completion of discovery, the United Association and Local 334 filed cross-motions for summary judgment. In a Letter Opinion dated August 17, 1979, the court issued its decision, granting summary judgment to the United Association. It ruled first that the Local had failed to exhaust its internal union remedies within the United Association. It ruled in the alternative that the United Association was entitled to summary judgment on the merits. After reviewing the relevant provisions of the Constitution and the history of their adoption and amendment, the District Court concluded there was "ample basis for the U[nited] A[ssociation]'s interpretation of the Constitution as well as the application of that interpretation in the Order of Consolidation of August 4, 1977" (App. 28a).

The Local appealed the District Court's decision. Nowhere in the main brief it filed with the Court of Appeals for the Third Circuit or in its reply brief to the United

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[1] Various other adverse effects were alleged by Local 334 in subsequent affidavits. Among these alleged effects were that Local 334's own contractual relations with employers had been destroyed (App. 16a); and that the continued existence of the jointly administered pension and welfare benefit funds for Local 334 members had been threatened (App. 16a).

Association's brief did the Local contend that the District Court lacked subject matter jurisdiction under Section 301(a). However, the Court of Appeals raised this issue *sua sponte* and the parties were requested to submit supplemental briefs on the issue prior to oral argument. At the oral argument itself, the jurisdictional issue was the only aspect of the case addressed and the Court requested further supplemental briefs on the issue.

On August 4, 1980, the Court of Appeals issued its decision. The Court rejected the position advanced by the United Association that there is federal jurisdiction under Section 301(a) over any action between two labor organizations in which a violation of a union constitution is alleged (App. 18a). There is no federal jurisdiction over such suits, the Court held, "in the absence of specific factual allegations of actions which have a significant impact on labor-management relations or industrial peace". (App. 18a). Determining that the standard which it thus formulated was not satisfied by the allegations of the pleadings in this case, jurisdiction was found lacking. Accordingly, the Court of Appeals vacated the judgment of the District Court and remanded to the District Court with instructions to remand the case to the state court from which it had been removed (App. 19a).

REASONS FOR GRANTING THE WRIT

I. THE COURT OF APPEALS HAS DECIDED AN IMPORTANT FEDERAL QUESTION WHICH SHOULD BE DECIDED BY THIS COURT.

This case concerns the meaning of the phrase "contracts * * * between any such labor organizations" (*i.e.*, labor organizations "representing employees in an industry affecting commerce * * *") in § 301(a) of the Labor Management Relations Act of 1947. In *Retail Clerks* v. *Lion Dry Goods*, 369 U.S. 17, the Court observed that

by virtue of that language "labor organizations could sue one another in federal courts on other grounds [than collective bargaining contracts] between themselves * * *" (*id.* at 26).

Since *Lion Dry Goods*, federal courts of appeals in ten Circuits (all but the Eighth) have decided the question whether this jurisdictional grant encompasses suits between one or more local labor organizations and their International alleging a violation of the International Constitution. The result has been that in three Circuits such an action will always be permitted, in one Circuit it will never be permitted, and in six Circuits jurisdiction depends on either the nature of the underlying dispute between the parties, or the court's characterization of the pleadings.

The leading case supporting jurisdiction is *Parks* v. *International Brotherhood of Electrical Wkrs.*, 314 F.2d 886 (4th Cir. 1963), *cert. denied*, 372 U.S. 976 (1963)). In a thorough discussion of the issue, the Court reasoned:

> The most that can be said with certainty is that Congress did not anticipate the problem. Looking to expressions of congressional purpose in regard to other provisions of the Act, it is possible to infer that had Congress considered the problem it would have limited section 301(a) jurisdiction so that federal courts would not thereby be in a position to settle such internal disputes. It is also possible, however, to conclude that Congress would have deemed it appropriate for federal courts to exercise jurisdiction over such disputes because, as the present one, they have traumatic industrial and economic repercussions. See § 1(b) of the LMRA, 29 U.S.C.A. § 141 (b). Moreover in interpreting the "between an employer and a labor organization" clause, the Supreme

Court has consistently favored the broad view of section 301(a) jurisdiction.

> In the absence of a clear expression of congressional intention to the contrary, we consider it permissible to adopt the more literal interpretation of the "between any such labor organizations" clause—the interpretation that would support jurisdiction in this case.
>
> A local union is a "labor organization" within the definition of § 2(5) of the NLRA. 29 U.S.C.A. § 152 (5). [314 F.2d at 916-917, footnotes omitted.]

Parks has been followed in the Second Circuit and in the Sixth Circuit. In *National Association of Letter Carriers* v. *Sombrotto*, 449 F.2d 915 (2nd Cir. 1971), Judge Friendly wrote:

> Section 301(a) of the Labor Management Relations Act of 1947, 29 U.S.C. § 185(a), provides federal jurisdiction to entertain "suits for violation of contracts between * * * any such labor organizations [representing employees in an industry affecting commerce]." On its face, this language constituted a clear predicate for jurisdiction at the time the complaint was brought to enforce the relevant provisions of the NALC Constitution. See Parks v. International Brotherhood of Elec. Workers, 314 F.2d 886 914-917 (4th Cir.), cert. denied, 372 U.S. 976, 83 S.Ct. 1111, 10 L.Ed.2d 142 (1963); cf. Abrams v. Carrier Corp., 434 F.2d 1234, 1247-1248 (2nd Cir. 1970), cert. denied, United Steelworkers of America v. Abrams, 401 U.S. 1009, 91 S.Ct. 1253, 28 L.Ed. 2d 545 (1971). Section 1208(b) of the 1970 Postal Reorganization Act, 84 Stat. 719, 39 U.S.C. § 1208 (b), which for purposes here relevant came into effect on July 1, 1971, tracks the language of § 301 of the Labor Management Relations Act, making explicit that such jurisdiction will extend to suits for violations of contracts between labor organizations

> representing employees of the United States Postal Service. [449 F.2d at 918.]

And in *Trail* v. *International Broth. of Teamsters, Etc.*, 542 F.2d 961, 968 (6th Cir. 1976), the Sixth Circuit wrote:

> The language of § 301(a) authorizes in its terms "Suits for violation of contracts . . . between any such labor organizations." We see no reason why such a contract might not be expressed in a union constitution, a local union charter, or a combination of both. [542 F.2d at 968.]

The precise opposite view was taken by the Tenth Circuit in *Smith* v. *United Mine Workers of America*, 493 F.2d 1241 (10th Cir. 1974):

> A holding that the word "contracts" as used in § 301(a) encompasses union constitutions would open the doors of the federal courts to every dispute between a parent union and a local union over the meaning and effect of the union constitution. If Congress intended to turn over to the federal courts the control and supervision of internal union affairs which have no external application to industrial peace or to collective bargaining agreements we believe that Congress would have said so explicitly. [493 F.2d at 1243-44.]

Between these two absolutist positions fall the views of six other Circuits. The First Circuit found "no reason to depart from the literal meaning of the statute" in upholding Section 301(a) jurisdiction in a dispute over a union constitution that "directly concern[ed] the representation of workers in collective bargaining." *Local Union 1219, United Brotherhood of Carpenters and Joiners* v. *United Brotherhood of Carpenters and Joiners*, 493 F.2d 93, 96 (1st Cir. 1974). While acknowledging that a federal court should be wary of asserting jurisdiction over a purely internal union dispute, the Seventh Circuit nevertheless held a union constitution could be a

Section 301(a) "contract" in disputes which "may effect [sic] labor-management relations." *Local Union No. 657, United Brotherhood of Carpenters and Joiners* v. *Sidell*, 552 F.2d 1250, 1255-56 (7th Cir. 1977), *cert. denied*, 434 U.S. 862 (1977). The Ninth Circuit has indicated that Section 301(a) jurisdiction will not exist if the underlying controversy relates "only to a union dispute which will not affect external labor relations." *Stelling* v. *International Brotherhood of Electrical Workers*, 587 F.2d 1379, 1384 (9th Cir. 1978), *cert. denied*, 442 U.S. 944 (1979). The Fifth Circuit has held the alleged violation of the constitution must create a threat to industrial peace or have a significant impact upon labor-employer relations. *Alexander* v. *International Union of Operating Engineers*, 624 F.2d 1235 (5th Cir. 1980). Taking still another approach, the Court of Appeals for the District of Columbia Circuit expressly refrained from deciding whether the International constitution is a "contract" because the complaint before it did not contain "concrete allegations of actual threats to industrial peace", regarded by the Court as a "factual prerequisite" to § 301(a) jurisdiction. *1199 DC, National Union of Hospitals and Health Care Employees* v. *National Union of Hospital and Health Care Employees*, 533 F.2d 1205 (D.C. Cir. 1976).

The Third Circuit's opinion in the case *sub judice* followed this approach of the District of Columbia Circuit, in that the Court did not at all discuss the meaning of the critical statutory word "contracts". (But see this Court's repeated admonition that ". . . with any case involving the interpretation of a statute, our analysis must begin with the language of the statute itself." *E.g. Touche, Ross & Co.* v. *Redington*, 442 U.S. 560, 568, and cases cited *id.*) As the governing standard, the Court below adopted with approval the language of the Ninth Circuit in *Stelling*, *supra*, that "if a controversy [relates] only to a union dispute which will not affect external

labor relations, § 301 does not provide a basis for jurisdiction." (App. 14a, quoting 587 F.2d at 1384.)

While the difference in verbal formulations among the courts which have taken an intermediate approach to the jurisdictional question may be of relatively little moment, these courts have differed materially even among themselves in their approach to whether a complaint is sufficient to come within § 301(a), particularly as to whether a particular dispute is purely internal or affects external labor relations. See e.g., the comparison of the decision below with the rulings of the First and Seventh Circuits, pp. 12-14, *infra*.

The sum of the matter is that the existence or nonexistence of jurisdiction under § 301(a) differs from Circuit to circuit, and is likely to depend within some Circuits on the nature of the case or the draftsmanship of plaintiff's counsel. This uncertainty in the meaning of § 301 (a) should not be allowed to continue. While the provision for suits for violations of contracts between labor organizations is doubtless of lesser concern than that relating to contracts between employers and labor organizations, and gives rise to substantially less litigation, it is a part of the statute, and its inclusion therein was not inadvertent. See *Lion Dry Goods*, *supra*, 369 U.S. at 26-27. If, as we believe, this clause establishes federal jurisdiction for suits between local and International unions for violation of the International constitution, that jurisdiction should be exercised throughout the entire federal system. If § 301(a) reaches no such suits, the lower federal courts should be relieved of that responsibility. And if the correct meaning of § 301(a) falls somewhere between, this Court should adopt a formulation which the lower courts and the parties can understand and apply without extended litigation of the threshold issue of jurisdiction.

II. THE DECISION OF THE COURT OF APPEALS IS IN CONFLICT WITH THE DECISIONS OF FIVE OTHER COURTS OF APPEALS.

a. The holding of the Court below that there was no jurisdiction over this action is, of course, in direct conflict with the decisions of the Second, Fourth and Sixth Circuits discussed above that jurisdiction under § 301(a) lies in any suit between a local union and its International to enforce the International Constitution. This conflict, we submit, is itself a sufficient ground for *certiorari*.

b. The decision below is also in conflict with the rulings of two of the Court of Appeals which have taken the intermediate position that the existence of § 301(a) jurisdiction depends on the potential impact of the dispute on labor-management relations.

In *Local Union 1219, Etc.* v. *United Bro. of Carpenters & Join.*, 493 F.2d 93 (1st Cir. 1974) (hereafter *Local 1219*), the Court sustained jurisdiction over an action under the International Constitution that "directly concern[ed] the representation of workers in collective bargaining." [2] And in *Local Union No. 657, United Brother-*

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[2] The Court reasoned:

> Although Congress did indicate some reluctance to "effect extensive and detailed statutory regulation of internal union affairs," Parks v. International Bhd. of Elec. Workers, 4 Cir., 1963, 314 F.2d 886, 915, 915-916 n. 49, cert. denied 372 U.S. 976, it is clear that the local and International are each suable entities under the act. When two such entities' relationship is a matter of contract, and that contract directly concerns the representation of workers in collective bargaining, there is no reason to assume that Congress did not intend the statute to apply simply because the two parties to the contract are related. Furthermore, this suit is on a contract and is not intended to enforce internal customs and practices of the unions which have not been reduced to a contract; exercising jurisdiction here will not involve the courts in regulating internal union matters which Congress did not intend to control. In

hood of Carpenters and Joiners v. *Sidell*, 552 F.2d 1250, 1255 (7th Cir.), *cert. denied*, 434 U.S. 862 (1977), the Court, following *Parks* and *Local Union 1219*, sustained jurisdiction under § 301 because the complaint alleged that the International's challenged conduct would "affect[] the local's relationship with employers rather than [a] mere intra-union organizational change [as in the D.C. Circuit's case in which no jurisdiction had been found]".[3]

In discussing the *Local 1219* and *Sidell* cases, the Ninth Circuit in *Stelling* stated that the controversy "significantly affected labor-management relations [in that] the dispute affected the representation of workers in collective bargaining." (587 F.2d at 1383, quoted at App. 13a). Yet the Court below, although professing to adopt the *Stelling* test (id. 14a-15a, 18a), determined that it is not satisfied by the complaint herein.

Although acknowledging that paragraph 12 of Local 334's original complaint (quoted at App. 15a and similar to paragraph 26 of the amended complaint, quoted at p. 4 *supra*) does assert that the change in referral lists will reduce the work opportunities of members of Local 334, the Court below disputes "that the change will have a significant impact on employer-union relations. The re-

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such circumstances there is no reason in this case to depart from the literal meaning of the statute. *See* National Ass'n of Letter Carriers v. Sombrotto, 2 Cir., 1971, 449 F.2d 915, 918; Parks v. International Bhd. of Elec. Workers, ante. [493 F.2d 196]

[3] See also *Id.* at 1256, quoting *Keck* v. *Employees Independent Association*, 387 F. Supp. 241, 250 (E.D. Pa. 1974):

"[w]hen it is clear that an action is not intended to enforce internal union customs and practices and the relationship between the parties is contractual and may effect [sic] labor-management relations, there is no reason to assume Congress did not intend Section 301(a) to apply."

ferral lists are an internal union device for assigning work opportunities." (App. 16a) But even where the decision as to which persons are to be referred for employment is left to the union, the employer is obviously and directly affected. Indeed, such an exclusive referral procedure would not exist but for an employer-union agreement to that effect, see generally *Teamsters Union* v. *Labor Board*, 365 U.S. 667 (1961).

The Court below also discounted the allegation that the challenged

> "consolidation order terminated Local 334's collective bargaining agreements, thus significantly affecting labor-management relations. Although the order did terminate collective bargaining agreements, it specifically provided that all contractual obligations of Local 334, including existing collective bargaining agreements, were to be assumed and carried out by Locals 14 and 274. Under this directive, any impact on labor-management relations would be minimal. Furthermore, plaintiff did not allege any facts purporting to indicate what impact this change would have." [App. 16a, footnote omitted.]

We submit to the contrary that a change in local unions of which employees are members, and which are signatories to contracts with employers, both "directly concern the representation of workers in collective bargaining" (*Local 1219*, *supra*) and "affect the local['s] relationship with employers * * *. (*Sidell*)" The Court of Appeals' characterization of the complaint and the dispute in this case is irreconcilable with those decisions.

CONCLUSION

For the foregoing reasons this Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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APPENDIX

**OPINION OF THE
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT OF AUGUST 4, 1980**

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 79-2407

LOCAL 334, UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, a unincorporated association

UNITED ASSOCIATION, LOCAL 49, UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, UNITED ASSOCIATION, LOCALS 523, 124, and 84, UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA,

Intervenors

v.

UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, AFL-CIO UNITED ASSOCIATION, LOCAL 14 and UNITED ASSOCIATION, LOCAL 274,

LOCAL 334, UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA,

Appellant

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

(D.C. Civil No. 77-1769)

Argued May 20, 1980

Before: ADAMS, VAN DUSEN and HIGGINBOTHAM,
Circuit Judges

(Opinion Filed August 4, 1980)

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OPINION OF THE COURT

VAN DUSEN, *Senior Circuit Judge.*

On this appeal Local 334 of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada (Local 334) challenges a consolidation order issued by its parent international union, the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada (the international). Local 334 alleges that the order violated the internationals' constitution. Having raised, *sua sponte*, the question of subject matter jurisdiction, we requested that the parties submit supplemental briefs on this matter and address the issue at oral argument. After reviewing the various contentions, we conclude that the district court lacked subject matter jurisdiction. Accordingly, we will vacate the judgment of the district court and remand to the district court with instructions to remand the case to the state court.[1]

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[1] The suit was originally filed in state court, and then removed by the international to federal district court.

I.

Local 334, composed of both plumbers and pipefitters, represented employees in Morris County, New Jersey. It was affiliated with the international, a labor organization with approximately 550 affiliated local unions and 335,000 members. Prior to 1977 in New Jersey there were 27 locals affiliated with the international. In 1976 and 1977 the international urged the locals to consolidate voluntarily. When the locals could not agree on a voluntary consolidation plan, the international, in January 1977, proposed a plan consolidating the nine locals in northern New Jersey into two locals, one representing all the plumbers and one representing all the pipefitters.[2] The affected locals did not agree to the international's proposed plan and took the position that the status quo should be maintained. On August 4, 1977, the international issued an order of consolidation. In accordance with the previously proposed plan, the plumber members of Local 334 became members of Plumbers Local 14; the pipefitter members of Local 334 became members of Pipefitters Local 274.[3]

Local 334 sent a letter to the general executive board of the international requesting a stay of the order pending appeal. When no response to this request was received, Local 334 filed suit on August 22, 1977, against the international in the Superior Court of New Jersey,

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[2] A third local, composed of metal trades members employed by the New Jersey Public Service Electric and Gas Company, was also established. None of these individuals had been members of Local 334.

[3] After the consolidation, Plumbers Local 14 consisted of its own former members plus the plumbers who had been members of Locals 49, 84, 124, 326, 334, and 523, and Pipefitters Local 274 consisted of its own former members plus the pipefitters who had been members of Locals 49, 334, 523, and 765.

seeking to enjoin the enforcement of the order of consolidation. The defendant international removed the case to the United States District Court for the District of New Jersey on August 26. On September 16, Local 334 filed a motion to remand the action to state court. This motion was denied. The district court proceeded to a consideration of the merits. Local 334 and the international each filed motions for summary judgment. On August 20, 1979, the court entered an order dismissing the suit for failure to exhaust internal union remedies and, in the alternative, granting summary judgment in favor of the international and against Local 334. Local 334 filed a timely appeal.

II.

In every appeal presented to it, this court is required to test the presence of subject matter jurisdiction. *Medlin* v. *Boeing-Vertol Company*, No. 78-1928 (3d Cir., Apr. 22, 1980), slip op. at 5; *Pharmadyne Laboratories, Inc.* v. *Kennedy*, 596 F.2d 568, 570 n. 3 (3d Cir. 1979); *In re Trimble Company*, 479 F.2d 103, 110 (3d Cir. 1973). "To permit a federal trial court to enter a judgment in a case removed without right from a state court where the federal court could not have original jurisdiction of the suit even in the posture it had at the time of judgment, would by the act of the parties work a wrongful extension of federal jurisdiction and give district courts power the Congress has denied them." *American Fire & Casualty Company* v. *Finn*, 341 U.S. 6, 18 (1951). Accordingly, it is our duty to examine this challenge by a local affiliate to the international union's interpretation of the international constitution to determine whether this suit is cognizable in federal court.

The defendant international asserts that there is federal jurisdiction over this suit and over any other action between two labor organizations in which a violation of

the union constitution is alleged.[4] It relies on § 301(a) of the Labor-Management Relations Act, 29 U.S.C. § 185 (a) (1976). This statute provides:

> "*Suits for violation of contracts* between an employer and a labor organization representing employees in an industry affecting commerce . . . or *between any such labor organizations*, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties." (Emphasis supplied.)

Asserting that "the very purpose [of § 301(a)] is to provide a federal forum for labor contracts,"[5] the defendant urges an expansive view of the jurisdictional grant embodied in § 301(a). It argues that "the union constitution creates a contractual relationship between the plaintiff local (and other locals) and the national union."[6] It contends that the union constitution itself is a contract between labor organizations. Therefore, according to this reasoning, a suit by a local or other subordinate labor group challenging the international's interpretation of the union constitution presents a federal question under 29 U.S.C. § 185(a), *supra*.

Local 334 disagrees with this view. It emphasizes that the federal courts have traditionally been very reluctant to intervene in the internal affairs of unions. *Lewis* v. *American Federation of State, County and Municipal Employees*, 407 F.2d 1185, 1192 (3d Cir.), *cert. denied*, 396 U.S. 866 (1969); *Drywall Tapers and Pointers* v. *Operative Plasterers' and Cement Masons' International*

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[4] Defendant's Supplemental Brief (May 29, 1980) at 2.

[5] *Id.* at 6.

[6] *Id.* at 2.

Association, 601 F.2d 675, 679 (2d Cir. 1979), *cert. denied*, 100 S.Ct. 918 (1980); *Stelling* v. *International Brotherhood of Electrical Workers*, 587 F.2d 1379, 1388-89 (9th Cir. 1978), *cert. denied*, 442 U.S. 944 (1979); *United Brotherhood of Carpenters & Joiners* v. *Sidell*, 552 F.2d 1250, 1255 (7th Cir.), *cert. denied*, 434 U.S. 862 (1977); *Smith* v. *United Mine Workers*, 473 F.2d 1241, 1242-44 (10th Cir. 1974); *Vestal* v. *Hoffa*, 451 F.2d 706, 709 (6th Cir. 1971), *cert. denied*, 406 U.S. 934 (1972); *English* v. *Cunningham*, 108 U.S. App. D.C. 365, 282 F.2d 848, 850 (D.C. Cir. 1960). *Cf. Howard* v. *United Association of Journeymen and Apprentices of Plumbing & Pipefitting Industry*, 560 F.2d 17, 21 (1st Cir. 1977); *Smith* v. *Local No. 25, Sheet Metal Workers International Association*, 500 F.2d 741 (5th Cir. 1974). It notes that the Supreme Court, although holding that the reference to "contracts" in § 301(a) encompasses more than collective bargaining agreements,[7] has never ruled that a labor union's constitution is a contract within the meaning of § 301(a). Further, it contends that there is no support in the legislative history for the defendant's assertion that federal district courts have subject matter jurisdiction in all suits in which there is a dispute concerning a union constitution.

The controversy thus is a limited one. The parties take opposing views of the scope of the jurisdictional grant embodied in § 301(a). In order to resolve this dispute, we must attempt to determine the intent of Congress in providing jurisdiction over "suits for violation of contracts between an employer and labor organization . . . or between any such labor organizations," 29 U.S.C. 185(a). The legislative history of this statute reveals that Congress explicitly intended that collective bargaining agreements be the prime subject of the "con-

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[7] *Retail Clerks* v. *Lion Dry Goods*, 319 U.S. 17, 26 (1962).

tracts between an employer and a labor organization" clause.[8] In *Retail Clerks* v. *Lion Dry Goods*, 369 U.S. 17 (1962), the Supreme Court held that this clause also encompassed more than collective bargaining agreements. It ruled that a strike settlement agreement is a contract intended to be actionable in federal court under § 301(a), stating:

> "It is enough that this is clearly an agreement between employers and labor organizations significant to the maintenance of labor peace between them. It came into being as a means satisfactory to both sides for terminating a protracted strike and labor dispute. Its terms affect the working conditions of the employees of both respondents. It effected the end of picketing and resort by the labor organizations to other economic weapons, and restored strikers to their jobs. It resolved a controversy arising out of, and importantly and directly affecting, the employment relationship. Plainly it falls within § 301(a)."

Id. at 28.

Legislative history, however, does not elucidate the "contracts . . . between . . . labor organizations" clause. Because the clause was not introduced until the House-Senate conference, there are no references to the clause in congressional debates or reports.[9] Nor did the conference committee provide any explanation of this addition.[10] Consequently, we must turn to decisional law for

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[8] 1 NLRB, Legislative History of the Labor Management Relations Act, 1947, at 421-24 (1948).

[9] 2 *id.* at 1526-1535, 1543 (1948).

[10] *Id. See* Note, *Applying the "Contracts Between Labor Organizations" clause of Taft-Hartley Section 301: A Plea For Restraint*, 69 Yale L. J. 299, 301 n. 18 (1959).

aid in interpreting the contracts-between-labor-organizations clause.

As mentioned earlier, the Supreme Court has not directly addressed this issue.[11] A number of our sister circuits have explored this issue, however, and their holdings provide substantial guidance. In *1199 DC, National Union of Hospital and Health Care Employees* v. *National Union of Hospital and Health Care Employees*, 175 U.S. App. D.C. 70, 533 F.2d 1205 (D.C. Cir. 1976), the defendant merged its affiliate in Washington, D.C., with its affiliate in Baltimore, Maryland. One affiliate sued, contending that the merger violated the union constitution. The court stated that the absence of "concrete allegations of actual threats to industrial peace" or of employers being faced with "untenable choices concerning union representation" was fatal to federal juris-

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[11] The Court in *Retail Clerks* did, however, cite approvingly *United Textile Workers* v. *Textile Workers Union*, 258 F.2d 743 (7th Cir. 1958), in which a federal court found jurisdiction under § 301(a) to enforce a no-raiding agreement between two international unions. The no-raiding agreement was deemed a contract between two labor organizations and held to fall within the scope of § 301(a). A suit based on a no-raiding agreement between two internationals is quite different from a suit based on one local's challenge to its international's interpretation of the union constitution, however. Violation of a no-raiding agreement between two internationals raises the spector of an industry-wide dispute. Such a dispute might well lead to disruption throughout large portions of the industry, creating problems for many employers. The problem of jurisdictional strikes was widely discussed by Congress during consideration of the Labor-Management Relations Act. *See* 1 NLRB, Legislative History of the Labor Management Relations Act, 1947, at 414, 615; 2 *id.* at 950-51, 995-97, 1056, 1654. No such attention was focused on the possibility of a local union challenging the international's interpretation of the union constitution, a situation less likely to have significant effects on employers. Thus, we must turn to another line of cases in order to resolve the specific jurisdictional question before us.

diction. *Id.* at 1208. Finding that the allegations concerning the union constitution revealed only an intra-union conflict, the court dismissed the claims under § 301(a).

Similarly, in *Smith* v. *United Mine Workers of America*, 493 F.2d 1241 (10th Cir. 1974), the international union ordered several districts to merge.[12] The basis of the suit filed protesting the merger was that the provision of the union constitution authorizing changes in the districts had been violated. The district court found for the plaintiff and enjoined the merger. The appellate court reversed, concluding that although the plaintiff's claim might be meritorious, there was no jurisdiction under § 301(a) to consider it. Believing that Congress was reluctant to have the federal courts intervene in every dispute between a parent and a local over the meaning of the union constitution, the court said:

> "If Congress intended to turn over to the federal courts the control and supervision of internal union affairs which have no external application to industrial peace or to collective bargaining agreements we believe that Congress would have said so explicitly. We agree. . . that it was not the intent of Congress for the courts to use the LMRA to police intra-union problems. . . . It follows that § 301(a) does not confer federal jurisdiction over the case before us." (Citation omitted.)

Id. at 1243-44.

In contrast to *1199 DC* and *Smith*, the Seventh Circuit in *Local Union No. 657, United Brotherhood of Carpenters and Joiners* v. *Sidell*, 552 F.2d 1250 (7th Cir.),

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[12] This union had a three level structure. The districts, which comprise the intermediate level, are composed of a number of locals. *Smith* v. *UMW*, 493 F.2d 1241, 1241-42 (10th Cir. 1974).

cert. denied, 434 U.S 862 (1977), held that there was § 301(a) jurisdiction over a complaint that the parent union had violated its constitution in ordering a local to affiliate with a certain district council. The court, however, adopted the holding of *1199 DC* that there must be more than "mere intra-union organizational change involved" in order for § 301(a) jurisdiction to exist. *Id.* at 1255. The court examined the pleadings and found that the plaintiff had alleged facts showing that the order in issue posed serious dilemmas concerning union representation for employees. In light of the specific factual allegations that the affiliation order would have a major impact on labor-management relations, the court concluded that § 301(a) jurisdiction was present.[13]

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[13] In *Local Union No. 657, Untd. Bthd. of Carpenters and Joiners* v. *Sidell*, 552 F.2d 1250 (7th Cir.), *cert. denied*, 434 U.S. 862 (1977), the court also considered whether a union constitution is a contract within the meaning of § 301(a). The court decided that a § 301(a) contract might be expressed in a union constitution, a local union charter, or a combination of both. *Id.* at 1253. We need not reach this issue. As the United States Court of Appeals for the District of Columbia Circuit remarked in *1199 DC*, 533 F.2d at 1207-08:

> "We need not face the issue whether a union constitution is a § 301(a) contract in this case, however. A factual prerequisite found in [cases where disputes about the interpretation of union constitutions provide jurisdiction under § 301(a)] is not alleged in this matter. . . . [T]here were no concrete allegations of actual threats to industrial peace. Furthermore, at oral argument before this court the plaintiffs offered no suggestion that employers were forced to make untenable choices concerning union representation. Therefore, the allegations concerning the union constitution reveal only an intra-union conflict.
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> "Without this factual prerequisite being alleged, we do not meet the issue whether the union constitution is a contract, and we affirm the dismissal of these § 301(a) allegations."

The posture of the instant case is similar to that of *1199 DC*. As explained in more detail in the text, *infra*, the allegations in the

The First Circuit reached a conclusion similar to that in *Sidell* in *Local Union 1219, United Brotherhood of Carpenters and Joiners* v. *United Brotherhood of Carpenters and Joiners*, 493 F.2d 93 (1974). There a bitter dispute between two locals erupted when the international granted a charter to represent millwrights to a new local. The carpenter locals, which had previously represented millwrights, refused to cease bargaining for millwrights. The president of the international did not provide interstate contractors with the necessary authorization to hire millwrights through the new local rather than the carpenter locals. Consequently, these employers were unable to determine with which union representatives they should bargain. The court examined the allegations to determine whether "exercising jurisdiction . . . [would] involve the courts in regulating internal union matters which Congress did not intend to control." *Id.* at 96. Concluding that the suit arising out of this particular factual situation involved more than solely intra-union concerns, the court ruled that federal jurisdictional under § 301(a) was present.

The most recent appellate decision on point, *Stelling* v. *International Brotherhood of Electrical Workers*, 587 F.2d 1379 (9th Cir. 1978), *cert. denied*, 442 U.S. 944 (1979), synthesized the cases discussed above. In *Stelling*, the court was presented with a claim that the international union had violated the international's constitution by failing to submit a bargaining agreement to the union membership for a ratification vote. The court held that there was no jurisdiction under § 301(a) be-

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complaint reveal only an internal union dispute. Without specific factual allegations which demonstrate that the consolidation order has a significant impact on labor-management relations, the complaint fails to satisfy a threshold requirement of § 301(a) jurisdiction.

cause the challenge to the union constitution concerned an "intra-union issue that does not affect labor-management relations." *Id.* at 1384. The touchstone of the *Stelling* court's analysis was the Supreme Court's statement in *Retail Clerks* that § 301(a) applies to suits based on contracts "significant to the maintenance of labor peace." 369 U.S. at 28. *Stelling* also discussed the pertinent courts of appeals cases, emphasizing that other courts, in attempting to ascertain whether § 301(a) jurisdiction existed, also had focused on the existence of a significant impact on labor peace.

> "Several courts have permitted actions under § 301 based on asserted violations of a union constitution. However, in each case where a constitution has provided the basis for jurisdiction, the court has specifically found that the controversy had either 'traumatic industrial and economic repercussions,' *Parks* v. *International Brotherhood of Electrical Workers*, 314 F.2d 886, 916 (4th Cir.), *cert. denied*, 372 U.S. 976, 83 S.Ct. 1111, 10 L.Ed.2d 142 (1963) (action by local against international for rescission of local's charter), or significantly affected labor-management relations, as where the dispute affected the representation of workers in collective bargaining. Local *Union 1219, United Brotherhood of Carpenters* v. *United Brotherhood of Carpenters*, 493 F.2d 93, 96 (1st Cir. 1974); *Local Union No. 657 of United Brotherhod of Carpenters* v. *Sidell*, 552 F.2d 1250, 1256 (7th Cir.), *cert. denied*, 434 U.S. 862, 92 S.Ct. 190, 54 L.Ed.2d 135 (1977). *See Keck* v. *Employees Independent Association*, 387 F.Supp. 241 (E.D.Pa. 1974).
>
> "Other courts have ruled that union constitutions do not provide a jurisdictional basis where the underlying controversy was strictly intra-union and unrelated to external labor-management relations. In *1199 DC, National Union of Hospital and Health*

Care Employees v. *Nat'l Union of Hospital and Health Care Employees*, 175 U.S. App. D.C. 70, 533 F.2d 1205 (1976), the union local and individual members and the parent unions alleging that a merger of locals violated the constitution. The court found no jurisdiction under § 301 because plaintiffs had not asserted any effect on collective bargaining or on relations with employers, therefore the dispute was deemed intra-union. In *Smith* v. *United Mine Workers*, 493 F.2d 1241 (10th Cir. 1974), union members sued the international contending that the merger of intermediate districts within the union violated the constitution. The 10th Circuit found no jurisdiction because the dispute was strictly intra-union and stated:

> [Section] 301(a) must be liberally applied to promote industrial peace, but that principle has no application here. This controversy relates only to the construction and application of the union constitution and has nothing to do with labor-management relations.

493 F.2d at 1243."

Id. at 1383. The *Stelling* court concluded that "if a controversy [relates] only to a union dispute which will not affect external labor relations, § 301 does not provide a basis for jurisdiction." *Id.* at 1384. Applying this standard to the record before it, the court ruled that a bald assertion that a certain action would have a major impact on labor-management relations was insufficient. Because the plaintiff failed to allege specific facts describing the impact on external labor relations, his claim was not cognizable under § 301(a). *Id.*

This review of the decisional law demonstrates that the courts are uniform in holding that solely intra-union disputes do not present a federal question under § 301(a). We agree with this reasoning and are persuaded by the

view that disputes between local and parent unions must involve events which potentially have a significant impact on labor-management relations or industrial peace in order for there to be jurisdiction under § 301(a). In light of these principles, we must examine the record in this case.

III.

The international correctly asserts that in determining whether § 301(a) jurisdiction exists the complaint is the crucial document.[14] It contends that the complaint contains three allegations of fact which have significant impact of labor-management relations. First, the defendant argues that plaintiff's charge that consolidation would change the existing system of referral constitutes an allegation of serious adverse impact on labor-management relations. In support of this contention, it relies on paragraph 12 of the original complaint:

> "At the present time plaintiffs have the exclusive contractual jurisdiction for all plumbing and pipefitting work in the area of Morris County. As such, Plaintiff refers out its membership without distinction as to whether they bear a plumber membership card or a pipe fitter membership card. The present Order of Consolidation will result in deprivation of work opportunities in that plaintiffs' mem-

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[14] The defendant concedes that in its answer it denied the complaint's factual allegations on which it now relies. Defendant's Supplemental Brief (May 29, 1980) at 11. It urges that it not be bound by its pleading, noting that in considering § 301(a) jurisdiction in cases involving challenges to a union's constitution, the courts have focused on the sufficiency of facts alleged. We agree that in this case the focus should be on the allegations in the complaint, rather than the denials in the answer. To hold otherwise would allow a defendant to defeat subject matter jurisdiction under § 301(a) in every case involving contracts between labor organizations merely by denying any allegations of external effects.

> bers will thereafter be required to work under separate referral lists as either plumbers or fitters and through separate local unions." [15]

Although this allegation does assert that the change in referral lists will reduce the work opportunities of members of Local 334, it does not follow that the change will have a significant impact on employer-union relations. The referral lists are an internal union device for assigning work opportunities. The local may agree to provide an employer with workers, and may use a referral list to facilitate that agreement, but the employer has no authority over the manner in which the referral list operates.[16] Such matters lie solely within the discretion of the union.

Second, the defendant argues that the plaintiff protested that the consolidation order terminated Local 334's collective bargaining agreements, thus significantly affecting labor-management relations. Although the order did terminate collective bargaining agreements, it specifically provided that all contractual obligations of Local 334, including existing collective bargaining agreements, were to be assumed and carried out by Locals 14 and 274.[17] Under this directive, any impact on labor-management relations would be minimal. Furthermore, plaintiff did not allege any facts purporting to indicate what impact this change would have.

Third, the defendant argues that the plaintiff alleged that consolidation would adversely affect the pension and welfare benefits of members of Local 334. The international points to the affidavit of William Wibbelt, former business manager of Local 334, who asserted that as a

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[15] App. at 14a.

[16] Plaintiff's Supplemental Brief (June 6, 1980) at 12-13.

[17] *Id.* at 14.

result of the consolidation order the pension and welfare benefits guaranteed to members of Local 334 would be destroyed.[18] This claim, however, misses the mark. Although pension and welfare benefits are the product of collective bargaining, they are essentially autonomous trust funds established under independent trust indentures. They are administered jointly by trustees composed of employers, employees, and neutral persons chosen by representatives of employers and employees. 29 U.S.C. § 186(c)(5)(B) (1976). The fact that a local union ceases to exist does not mean that the trust fund ceases to exist.[19] Nor does it mean that the employer is released from his obligations under the collective bargaining agreement to make pension and welfare contributions. As noted above, the consolidation order explicitly stated that the collective bargaining agreements and other contractual obligations of Local 334 would be carried out by the consolidated local unions. Thus, the fact that it is possible that changes in these trust funds may occur does not constitute a significant impact on labor-management relations.

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[18] App. at 130a.

[19] In fact, although the locals have been consolidated, the status of Local 334's welfare and pension funds has not changed. At this time, almost three years after the order of consolidation, Local 334's welfare and pension funds are still in existence as a separate entity. Plaintiff's Supplemental Brief (June 6, 1980), at 16. Furthermore, at the time of the consolidation, the affected locals were informed that various alternatives regarding the pension and welfare benefits plans were possible. The first alternative contemplated maintaining the individual plans of each local as separate plans with distinct features. Another alternative contemplated merging the plans of each local into the Local 14 plan. Under the second option, beginning with the expiration date of the collective bargaining agreements, employers' contributions for plumbers would be sent to Local 14. Exhibit D to Affidavit of Thomas Brennan, filed November 10, 1977.

We conclude that the pleadings in this case do not present concrete allegations of actual impact on employer-union relations. Our examination of the pleadings reveals that dispute over the propriety of the consolidation order concerns an intra-union matter. Therefore, we hold that § 301(a) does not provide federal jurisdiction for this case.[20]

IV.

To summarize, the intent of Congress in enacting § 301(a) of the Labor Management Relations Act was to grant jurisdiction to the federal courts over suits based on contracts significant to the maintenance of labor peace. Suits concerning intra-union matters that do not have a significant impact on labor-management relations or industrial peace are outside the scope of § 301(a). Thus, a suit by a local union challenging the parent union's interpretation of the union constitution does not, in the absence of specific factual allegations of actions which have a significant impact on labor-management relations or industrial peace, present a federal question under § 301(a). In the instant case the plaintiff, Local 334, contests the defendant international's order of consolidation, asserting that the order violates the unions constitution. Although Local 334 alleges that its members will be harmed in some ways as a result of the consolidation, the potential difficulties it alleges will result, even if they occur, would not have a significant impact on labor-management relations or industrial peace. Therefore, this suit, raising solely intra-union issues, falls outside the ambit of § 301(a). In light of this analysis, we conclude that the district court lacked subject matter jurisdiction over this controversy.

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[20] In light of this holding we necessarily do not reach the merits of this case. Our decision in favor of plaintiff's position on the jurisdictional issue carries no implication that we agree with the plaintiff on the substantive issue.

Accordingly, we vacate the judgment of the district court and remand to the district court with instructions to remand the case to the state court from which it was removed.

A true Copy:

Teste:

Clerk of the United States Court of Appeals for the Third Circuit

OPINION OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY OF AUGUST 17, 1979

UNITED STATES DISTRICT COURT
Room 411, U.S. Post Office Building
Newark, New Jersey 07102
FTS # (B) 341-2517

Vincent P. Biunno (201) 645-2517
Judge (201) 642-2451

LETTER OPINION (Filed August 20, 1979)

LETTER OPINION

Re: Local 334 v. United Association
Civil 77-1769

This action began in N.J. Superior Court. Local 334 of the United Association of Journeymen and Apprentices of the Plumbing & Pipe Fitting Industry (Local 334) sued the United Association of Journeymen and Apprentices of the Plumbing & Pipe Fitting Industry of the U.S. and Canada, AFL-CIO (United Association or U.A.) which removed to this Court. Jurisdiction is under Section 301 of the Labor Management Relations Act of 1947, 29 USC § 185(a). The dispute involves the propriety of the United Association's interpretation of its Constitution (1976) and the legality of its application in connection with an Order of Consolidation by the General President, Martin J. Ward, dated August 4, 1977.

The Order for Consolidation provided that a number of local unions in the northern New Jersey area, namely Locals 14, 49, 84, 124, 274, 326, 334, 523 and 765 were to be consolidated along trade lines (i.e., plumber or pipefitter) with the result that only Locals 14 and 274 sur-

vived. Local 765 and the pipefitter members of Locals 49, *334* and 523 were consolidated into Pipefitters Local 274. Locals 84, 124 and 326 and the plumber members of Locals 49, *334* and 523 were consolidated into Plumbers Local 14. The result was that locals such as plaintiff Local 334, which had previously been dual trade locals (plumbers and pipefitters) were split such that plumber members were consolidated into Plumbers Local 14 and pipefitter members were consolidated in Pipefitters Local 274.

The gravaman of plaintiff's action is that the consolidation order constitutes an illegal application of section 86 of the U.A. Constitution when read in light of section 3 of the Constitution and its historical development. Section 86 deals with consolidation and Section 3 with types of charters. The relief sought is an injunction against enforcement of the consolidation order and judgment setting aside the consolidation order on the ground that it exceeds the powers of the General President under section 86 of the U.A. Constitution.

Following a full hearing on September 16, 1977, an application by Local 334 for a preliminary injunction was denied by Order of that date. An appeal was taken from the denial of the preliminary injunction and apparently voluntarily withdrawn thereafter. By Order dated December 22, 1977, leave was granted to Locals 14 and 274 (surviving consolidated locals) to intervene as parties defendant and to Locals 49, 523, 128 and 84 to intervene as parties plaintiff.

The Court now has before it cross-motions for summary judgment filed by U.A. and Local 334. The other parties in intervention have likewise joined in the respective motions. All parties are in apparent agreement that the issues are properly before the Court as matters of

law and that there are no genuine issues of material fact, F.R.Civ.P. 56.

The first question is that of exhaustion of internal union remedies. This issue goes to the Court's jurisdiction. It was raised at the hearing of September 16, 1977 on application for preliminary injunction. (Tr. 137-38). Section 220 of the 1976 Constitution provides for an appeal to the next ensuing Convention of U.A. Pursuant to section 11, the next Convention will be held in August, 1981, since the section provides for a regular convention every five years. Section 222 of the 1976 Constitution, to which Local 334 has agreed, provides for exhaustion of remedies as follows:

> "SEC. 222. No officer, representative or member of the United Association or its Local Unions, or District Councils, or State or Provincial Association shall resort to court proceedings of any description, in any matter pertaining to this organization or its Local Unions, or his membership, or his office, until all remedies provided for within the United Association's Constitution have been fully exhausted."

This contractual provision to which Local 334 has bound itself has been held to expressly bar resort to court before full and complete exhaustion of remedies within the U.A. *Local 14, United Association, etc.* v. *United Association, etc.*, 61 N.J. Super. 228 (App. 1960). Although the *Local 14* case was decided long before adoption of the 1976 Constitution, the operative language of section 222 was identical under the then existing Constitution. (See section 222, 1956 Constitution).

The language concerning exhaustion contained in the case of *Cameron* v. *Durkin*, 74 N.E. 2d 671 (Mass., 1947) is not pertinent to the issue, since the 1946 U.A. Constitution was then in effect. The Court found that

an appeal to the next U.A. Convention was not a jurisdictional prerequisite to filing suit because under the Constitution then in effect the holding of a convention was not compulsory and a majority vote of the ownership could prevent the holding of a convention. (See section 44, 1946 Constitution). This is no longer the case, the 1976 Constitution, in section 11, provides that "Regular Conventions of the United Association *shall* be held once every five years." It is mandatory. As such, the language of *Cameron* is not a precedent on the exhaustion issue.

The language of section 222 is mandatory and clear and is the product of a voluntary contractual relationship binding upon Local 334 as a party to the agreement. As such, in accordance with the *Local 14* case, *supra*, the Court finds that jurisdiction does not exist.

Assuming that this ruling is incorrect and that there is jurisdiction, the merits of the cross-motions for summary judgment are considered.

The essence of Local 334's argument is that President Ward's application of section 86 of the 1976 Constitution, which governs consolidation, was illegal and beyond his authority under the Constitution. The gravaman of the complaint is that Local 334, previously a dual trade local composed of both plumbers and pipefitters, has been split such that its plumbers went into one single trade local (Plumbers Local 14) and its pipefitters into another (Pipefitters Local 274). It is argued that this is an improper exercise of the consolidation power.

Local 334 asserts that the U.A. lacks the power under section 3 of the 1976 Constitution to charter new "straight line" or "single trade" local unions and hence cannot legally achieve the result through consolidation. Section 3 *supra*, provides in pertinent part:

> "The United Association shall charter three types of Local Unions: Building and Construction Trades Local Unions, Metal Trades Local Unions, and Combination Local Unions."

This section on chartering, the argument continues, must be read in light of the historical development of the present U.A. Constitution. There is no dispute that before 1946 the U.A. had craft or trade distinctions as between plumbers and pipefitters and that unions were properly chartered as "straight line" or single trade locals. Likewise, it is not disputed that at the 1946 convention the concept of the "universal journeyman" was adopted and that a number of constitutional provisions which abolished all trade lines as between plumber and pipefitters were adopted.

Accordingly, the new section 2 of the 1946 Constitution provided:

> "Sec. 2(a). Membership. The United Association of Journeymen and Apprentices of the United States and Canada, having full and exclusive trade jurisdiction over the plumbing and pipe fitting industry, shall be composed of journeymen and apprentices of one craft without jurisdictional lines of demarcation.
>
> Sec. 2(b). Abolishment of Trade Lines. That there shall be one trade craft in the plumbing and pipe fitting industry for all journeymen and apprentice members of the United Association and all journeymen members shall be permitted without restriction or bar to perform all work governed by the trade jurisdiction of the United Association; all apprentice members of the United Association shall, under the supervision and control of journeymen members, be permitted without restriction or bar to perform all

work covered by the trade jurisdiction of the United Association."

In conformity with this, a new version of section 143 was also added to the 1946 Constitution:

"Jurisdiction of Work

Sec. 143. The United Association having full and exclusive jurisdiction over the plumbing and pipe fitting industry, including the supervision, fabrication, installation and maintenance of plumbing and pipe fitting installations of every description and character, shall be composed of journeymen and apprentices of one craft, without jurisdictional lines of demarcation.

The United Association shall charter three types of Local Unions: Building and Construction Trades Local Union, Metal Trades Local Union, and a Combination Local Union. There shall be but one trade craft in the plumbing and pipe fitting industry for all journeymen and apprentice members of the United Association, and all journeymen members and apprentice members of the United Association shall be permitted without restriction or bar to perform all work governed by the trade jurisdiction of the United Association."

It is Local 334's contention that the survival of the language concerning the types of charters contained in the 1946 Constitution, presently embodied in section 3 of the 1976 Constitution, somehow demonstrates the survival of the doctrine of the "universal journeyman" concept which had abolished all trade line distinctions between plumbers and pipefitters.

The series of modifications to the Constitution from 1946 to 1976 simply belies this interpretation. All lan-

guage concerning existence of only one trade craft has been deleted over the years. The "universal journeyman" concept has simply been eliminated by the plain language of the Constitution since 1946 as well as in practice. The existence of "straight line" plumbers or pipefitters locals through the years since 1946 cannot be disputed. See *Local 14* v. *United Association, etc.*, 61 N.J. Super. 228, 231 (App. Div. 1960). *See also* the Ward affidavit.

In 1956 a resolution was passed which provided membership books contain a place for designation of a special skill which skills were limited to plumber, steam fitter or pipe fitter, sprinkler fitter, and lead burner.

At the 1961 Constitutional Convention all references to the existence of a single craft in the plumbing and pipefitting industry were eliminated. The deletions are clear. All language contained in the 1946 Constitution which referred to the abolution of trade lines and prohibition of restrictions on trade jurisdiction was conspicuously deleted (See sections 2, 3 and 4 of 1961 Constitution) and remains absent from the current 1976 Constitution. Plaintiff asserts, based upon the Committee's statement that the 1946 sections were "superfluous and unnecessary," that the 1961 deletions did not change the substance of the Constitution as it relates to plumber-pipefitter trade lines. The Committee's language is ambiguous and capable of a number of interpretations.

On the other hand, the deletions made, as well as the language of the 1961 and 1976 Constitutions, are clear. The 1946 additions were effectively eliminated in full.

The courts will not interfere in intra-union matters and impose an interpretation of a union rule or constitution contrary to that of the union itself so long as that interpretation is reasonable. *See e.g., English* v. *Cun-*

ingham, 282 F.2d 848 (D.D.C. 1960); *Vestal* v. *Hoffa*, 451 F.2d 706 (CA 6, 1971). This is basic contract law. Courts do not make contracts different than those made by the parties.

The interpretation of the 1976 Constitution by the U.A. is clearly reasonable and in accordance with the provisions contained therein. The constitutional history denies plaintiff's interpretation of section 3 of the current Constitution. The "single trade" concept has been abandoned and fully deleted from the Constitution. The express language of the Constitution is controlling.

Moreover, section 86 of the 1976 Constitution provides as follows:

> "Consolidation of Locals
>
> Section 86. Whenever, in the judgment of the General President, it is apparent that there is a superfluous number of Local Unions in any locality, and that a consolidation would be for the best interest of the United Association, locally or at large, he shall have the power to order Local Unions to consolidate and to enforce the consolidation of said Local Unions or said territory in one or more Local Unions, provided such course received the sanction of the General Executive Board."

This section was amended in response to the holding of *Cameron* v. *Durkin*, *supra*, in order to clearly provide that a given local could be split and consolidated into two or more locals. (Compare section 90, 1961 Constitution with section 131 of the 1946 Constitution). [See Ex. F to Ward Affidavit].

Section 2 of the 1976 Constitution reserves in the U.A. "the right to decide all matters pertaining to trade and territorial jurisdiction of its affiliated Local Unions. . . ."

These two constitutional provisions, viewed in light of the historical deletions of the "single craft" or "universal journeyman" concept, provide ample basis for the U.A.'s interpretation of the Constitution as well as the application of that interpretation in the Order of Consolidation of August 4, 1977.

Accordingly, defendant U.A.'s motion for summary judgment, joined in by the intervenor defendants, Locals 14 and 274, will be granted.

Nothing in this opinion is to be read as a comment upon the rights of an individual union member to practice the trade or trades which he practiced prior to the consolidation. This point was raised in the case. No individual union member was ever brought in as a party, and so his individual rights are not dealt with in any way.

August 17, 1979

/s/ Vincent P. Biunno, U.S.D.J.

Original to Clerk
xc: All parties

JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT OF AUGUST 4, 1980

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 79-2407

LOCAL 334, UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, an unincorporated association

UNITED ASSOCIATION, LOCAL 49, UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, UNITED ASSOCIATION, LOCALS 523, 124 and 84, UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA,

Intervenors

VS.

UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, AFL-CIO UNITED ASSOCIATION, LOCAL 14 and UNITED ASSOCIATION, LOCAL 274,

LOCAL 334, UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA,

Appellant

(D.C. Civil No. 77-1769)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

Present: ADAMS, VAN DUSEN and HIGGINBOTHAM, *Circuit Judges*

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the District of New Jersey and was argued by counsel on May 20, 1980.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court filed August 20, 1979, be, and the same is hereby vacated and the cause is remanded to the said District Court with instructions to remand the cause to the state court from which it was removed, in accordance with the opinion of this Court.

ATTEST:

/s/ [Illegible]
Clerk

August 4, 1980

MAR 13
CLERK

No. 80-710

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, AFL-CIO, *et al.*,
Petitioners,

v.

LOCAL 334, UNITED ASSOCIATION ETC., *et al.*,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

JOINT APPENDIX

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for Respondents

PETITION FOR CERTIORARI FILED OCTOBER 31, 1980
CERTIORARI GRANTED JANUARY 26, 1981

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NOTE: The following documents may be found in the Petition for Certiorari at the designated pages:

Opinion below of the United States Court of Appeals for the Third Circuit of August 4, 1980 ....Pet. 1a

Opinion of the United States District Court for the District of New Jersey of August 17, 1979 ....Pet. 20a

Judgment of the United States Court of Appeals for the Third Circuit of August 7, 1980 .....Pet. 29a

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, MORRIS COUNTY

C-11-239

C-4637-76E

DOCKET ENTRIES

DATE	PROCEEDINGS
8-22-77	Complaint; Certification
8-26-77	Amended Complaint
8-26-77	Certification—William F. Wibbelt, Jr.
6-26-78	Order of Dismissal w/o Prej.
10- 1-80	Order Remanding Case to Superior Court
10-23-80	Order Confirming Dismissal

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Civ. 77-1769

DOCKET ENTRIES

DATE	PROCEEDINGS
8-26-77	Petition for removal from Superior Court of Morris County with copies of Complaint and order to show cause and temporary restraining order re preliminary injunction, filed 8-25-77.
8-26-77	Notice of petition for removal, filed 8-25-77.
8-26-77	$500.00 deposited in Registry in lieu of Appeal Bond.
8-26-77	Clerk's Certificate of Cash Deposit, filed.
8-26-77	Notice of Allocation and Assignment filed. (Newark-Biunno)
8-29-77	Temporary restraining order and order to show cause re preliminary injunction ret. 9-7-77, filed 8-26-77. (Whipple) Notice mailed.
8-29-77	Affidavit of William F. Wibbelt, Jr., filed 8-26-77.
8-29-77	Affidavit of John A. Craner, filed 8-26-77.
8-29-77	$500.00 deposited in Registry in lieu of preliminary injunction bond.
8-29-77	Clerk's Certificate of Cash Deposit, filed.
9- 9-77	Temporary restraining order and order to show cause re preliminary injunction ret. 9-14-77, filed 9-7-77. (Biunno) Notice mailed.
9- 9-77	Hearing on plaintiff's application re preliminary injunction. Ordered hearing continued to September 14, 1977. (Biunno) (9-7-77)
9- 9-77	Affidavit of George H. Bliss, filed 9-8-77.

DATE	PROCEEDINGS
9- 9-77	Affidavit of John McNulty, filed 9-8-77.
9- 9-77	Affidavit of Frances J. Coyne, filed 9-8-77.
9-14-77	Affidavit of Martin J. Ward, filed 9-13-77.
9-19-77	Notice of motion and motion by plaintiffs to remand back to the Superior Court of Morris County ret. 9-16-77, filed 9-16-77. (Brief attached).
9-19-77	Affidavit of William F. Wibbelt, Jr., filed 9-16-77.
9-19-77	Continued hearing on plaintiffs' application re preliminary injunction. Ordered application denied. (Biunno) (9-16-77).
9-19-77	Consent order adjourning temporary restraining order and order to show cause re preliminary injunction to September 16, 1977 and restraint against defendant are continued until a decision is rendered following the hearing on Sept. 16, 1977, etc., filed 9-16-77. (Biunno) Notice mailed.
9-19-77	Order denying plaintiff's application for preliminary injunction and continuing the stay of the order of consolidation made by the General President of defendant until such time as a panel of the Court of Appeals has itself acted on application for stay pending decision on the appeal which plaintiff intends to take, filed 9-16-77. (Biunno) Notice mailed.
9-21-77	Transcript of hearing taken on 9-16-77, filed.
10- 6-77	*Answer*, filed 10-4-77.
10-11-77	Affidavit of Harry Leddy, filed.
10-11-77	Affidavit of William Albanese, filed.
10-12-77	Substitution of attorneys on behalf of defendants, filed.
10-14-77	Hearing on plaintiffs motion to remand action back to Superior Court of Morris County. Ordered motion denied. (Biunno) (10-11-77).
10-14-77	Ordered leave granted to plaintiff to allow other locals to intervene. (Biunno) (10-11-77).

DATE	PROCEEDINGS
10-14-77	Hearing on plaintiffs motion for a temporary restraining order. Ordered motion denied. (Biunno) (10-11-77).
10-14-77	Proposed temporary restraining order and order to show cause with court's denial thereon, filed 10-11-77. (Biunno) Notice mailed.
10-17-77	Notice of Appeal of plaintiffs, filed 10-14-77.
10-17-77	Copies of notice of appeal sent to U.S.C.A. and McCarter and English, Esqs.
10-19-77	Transcript of hearing held 10-11-77, filed 10-18-77.
10-21-77	Order denying plaintiffs' motion to remand action back to Superior Court denying plaintiffs' motion for temporary restraining order and order to show cause and granting plaintiffs leave to file petitions for intervention by Oct. 28, 1977, filed 10-20-77. (Biunno) Notice mailed.
10-25-77	Notice of defendant to take deposition of William Albanese, Bertram Harrop, Louis Marzitelli, Patrick Perno, D'Arcy Richardson, Harold Leddy, Edward L. Baker, Robert A. Garrison, Sr., Jerry Ginder, Robert F. Johnson, H. A. Meyers, Jr., L. Parks, A. Picone, F. Quayle, G. D. Smith, Wilbur G. Swayze, R. Whitmore, William F. Wibbett, Jr., John A. Boniface, Robert Glennon, Richard E. Purtell and Joseph Rooney, filed.
10-31-77	Notice of motion by intervenor, Local 49 for an order for leave to intervene as a party plaintiff and filed complaint in intervention, filed 10-28-77. (Brief previously submitted).
11-1- 77	Notice of motion by Locals 523, 124 & 84 for leave to intervene as a party plaintiff and file complaint in intervention and for a preliminary injunction ret. 11-28-77, filed 10-28-77. (Brief previously submitted).
11-1- 77	Proof of mailing of copy of motion to intervene by Locals 523, 124 & 84, filed.

DATE	PROCEEDINGS
11-4- 77	Affidavit of mailing of copy of Local 49's motion in intervention, filed.
11-11-77	Affidavit of Thomas Brennan, filed 11-10-77.
11-18-77	Certified copy of order of U.S.C.A. denying motion of plaintiff for stay pending appeal on behalf of Locals 523 and 124 for injunction pending appeal, filed. Notice mailed.
11-22-77	Notice of motion by defendant for an order declaring that Locals 274 & 14, as the surviving Locals in a consolidation of Local Unions among Locals 14, 84, 124, 149, 274, 362, 334, 523 & 765 are essential parties and requiring Locals to be named as parties plaintiff or defendant, filed 10-27-77. (No brief) (ret. 11-28-77).
11-22-77	Motion by Locals 14 & 274 for an order for leave to intervene as party defendants and proof of service, filed 10-27-77. (No Brief) (ret. 11-28-77).
11-29-77	Proclamation made on motion by Locals 14 and 274 for an order for leave to intervene as party defendants. Ordered motion granted. (Biunno) (11-28-77).
11-29-77	Proclamation made on motion by defendant for an order declaring that Locals 274 and 14 as the surviving Locals in a consolidation of Local Unions among Locals 14, 84, 124, 149, 274, 326, 334, 523 and 765 are essential parties and requiring Locals to be named as parties plaintiff or defendant. Ordered motion granted. (Biunno) (11-28-77).
11-29-77	Proclamation made on motion by intervenor, Locals 523, 124 and 84 for leave to intervene as a party plaintiff and file complaint in intervention and for a preliminary injunction. Ordered motion granted. Order to be submitted. (Biunno) (11-28-77).
2-27-77	Consent order granting Locals 523, 124 and 84 leave to intervene and file complaint in intervention by January 19, 1978, filed 12-22-77. (Meanor) Notice mailed.

DATE	PROCEEDINGS
1-16-78	Record on Appeal sent to U.S.C.A. (Notice Mailed).
1-17-78	*Counterclaim* of defendants, Local Union No. 274 and Local Union No. 14 against plaintiffs, filed 1-16-78.
1-24-78	Complaint in intervention, filed 1-19-78.
1-30-78	Complaint in intervention, filed 1-27-78.
1-30-78	Certificate of mailing of copy of complaint in intervention for Local 49, filed.
2-2- 78	Notice of motion by defendants, United Association, Local 14 and Local 274 for leave to amend counterclaim of Local 14 & Local 274; and for leave to file and serve a third party complaint and proof of service, filed 2-1-78. (No Brief) (ret. 3-13-78).
2- 2-78	Certification of David Friedland, filed 2-1-78.
2-16-78	Notice of motion by plaintiffs for an order to consolidate Civ. 77-1 with Civ. 77-2266 ret. 3-13-78 and statement in lieu of brief, filed 2-14-78.
2-16-78	Affidavit of John A. Craner in support of motion to consolidate, filed 2-14-78.
2-16-78	Proof of mailing of copies of notice of motion to consolidate and affidavit, filed 2-14-78.
2-16-78	Certified copy of order of U.S.C.A. granting plaintiffs motion to dismiss appeal, filed 2-14-78.
2-23-78	*Answer* of defendant, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States, Canada, AFL-CIO to complaint in intervention of plaintiffs in intervention, Locals 523, 124 & 84, filed 2-22-78.
2-23-78	*Answer* of defendant, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States, Canada, AFL-CIO to complaint in intervention of plaintiffs in intervention, Local 49, filed 2-22-78.

DATE	PROCEEDINGS
3-14-78	Hearing on motion by defendants United Association Local 14 and Local 274 for leave to amend counterclaim of Local 14 and Local 274 and for leave to file and serve a third party complaint. Order motion granted. Order to be submitted. (Biunno) (3-13-78).
3-14-78	At Call for hearing on motion by plaintiffs for an order to consolidate 77-1769 and Civ. 77-2266, counsel reported motion withdrawn as moot. (Biunno) (3-13-78).
5-16-78	Notice of motion by plaintiff and plaintiffs in intervention for an order compelling defendant, United Association of Journeymen and Apprentices, etc. to produce documents which it represented would be produced following the deposition of Martin J. Ward as part of the notice to produce in conjunction with the deposition ret. 6-12-78 and statement in lieu of brief, filed.
5-16-78	Affidavit of John A. Craner, filed.
5-16-78	Affidavit of John A. Craner pursuant to General Rule 12G, filed.
5-16-78	Proof of mailing of copies of notice of motion to produce documents etc., filed.
5-16-78	Proof of mailing of copies of affidavit pursuant to General Rule 12G, filed.
5-22-78	*Pre-Trial order*, filed 5-19-78 (Permitted). Notice mailed.
5-23-78	Memorandum order withdrawing motions by intervenor-defendant Local 14 and 274 for leave to amend counterclaim and to file a third-party complaint against William Wibbett, Jr., William Doonan, George Whitenack and Robert Glennon, previously granted, filed 5-22-78. (Biunno) Notice mailed.

DATE	PROCEEDINGS
6-13-78	Deposition of Martin J. Ward taken on 3-2-78, filed 6-9-78.
6-15-78	At call for hearing on motion by plaintiff and plaintiffs in intervention for an order compelling defendant, United Association of Journeymen, etc. to produce documents which it represented would be produced following the deposition of Martin J. Ward as part of the notice to produce in conjunction with the deposition, court reported motion withdrawn. (Biunno) (6-12-78).
6-28-78	Hearing on plaintiffs motion for a preliminary injunction. Ordered motion denied. Order to be submitted. (Biunno) (6-26-78).
6-29-78	Proposed Order to Show Cause of Plaintiffs for a preliminary injunction filed 6-26-78.
6-29-78	Affidavit of John A. Craner, Esq., in support of plaintiffs' application for an Order to Show Cause filed 6-26-78.
6-29-78	Order denying Plaintiffs' application for a Preliminary Injunction and for a stay pending appeal or application to the Court of Appeals for a stay pending appeal filed 6-27-78. (Biunno) (Notice mailed).
6-29-78	Transcript of hearing held June 26, 1978, filed 6-27-78.
6-29-78	Notice of Appeal of Plaintiff, Local 334, from Order denying a Preliminary Injunction, filed 6-27-78 at 11:15 a.m.
6-29-78	Copies of Plaintiff's Notice of Appeal sent to U.S.C.A.; Parsonnet, Parsonnet & Duggan, Esqs.; McCarter & English, Esqs.; and Friedland & Friedland, Esqs.
7-18-78	Certified copy of order of U.S.C.A. denying plaintiff's motion for stay pending appeal, filed 7-12-78.
7-26-78	Record on Appeal sent to U.S.C.A. (Notice mailed).

DATE	PROCEEDINGS
11 -8-78	Notice of motion by defendant, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada for summary judgment ret. 11-27-78 and proof of service, filed 11-6-78. (Brief submitted).
11-13-78	Notice of cross-motion by defendants, Local 274 & Local 14 for summary judgment ret. 12-11-78, filed 11-9-78. (Brief previously submitted).
11-13-78	Affidavit of mailing of notice of motion by defendants, Local 274 & 14 for summary judgment filed 11-9-78.
12-11-78	Consent order adjourning defendants motion for summary judgment to January 8, 1978, filed 12-8-78. (Biunno) Notice mailed.
1- 5-79	Notice of motion by plaintiff for summary judgment ret. 2-13-79, filed 1-3-79. (Brief submitted).
1- 5-79	Affidavit of William Wibbelt, filed 1-3-79.
1- 5-79	Proof of mailing of copy of notice of motion by plaintiff for summary judgment, etc., filed 1-3-79.
1-26-79	Consent order adjourning motions for summary judgment to Feb. 13, 1979, filed 1-25-79. (Biunno) Notice mailed.
2- 5-79	Certified copy of order of U.S.C.A. that the record of appeal be filed out of time as of the date of this order, filed 2-2-79.
2- 5-79	Affidavit of Joseph A. Walsh, filed.
2-16-79	Hearing on motion by plaintiff for summary judgment. Decision reserved. (Biunno) (2-13-79).
2-16-79	Hearing on motion by defendant, United Assoc. of Journeymen, for summary judgment. Decision reserved. (Biunno) (2-13-79).
2-16-79	Hearing on cross-motion by defendants, Local 274 and 14 for summary judgment. Decision Reserved. (Biunno) (2-13-79).

DATE	PROCEEDINGS
3-20-79	Affidavit of William Wibbelt, filed 3-19-79.
6-20-79	Certified copy of order of U.S.C.A. dismissing the appeal, filed 6-18-79.
8-22-79	Letter Opinion, filed 8-20-79. (Biunno) (granting motion of defendants United Association of Journeymen, etc., Local 14 & 274 for summary judgment).
8-27-79	Order dismissing complaint for lack of jurisdiction; and granting summary judgment for defendants, filed 8-20-79. (Biunno). Notice mailed.
9- 5-79	Order directing the sum of $500.00 from the registry of the court to be refunded to Friedland & Friedland in lieu of Appeal Bond, filed 8-31-79. JK (Biunno).
9-18-79	Notice of appeal by plaintiff, Local 334, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, filed 9-17-79 at 3:30 P.M.
9-18-79	Copies of notice of appeal sent to U.S.C.A., Parsonnet, Parsonnet & Duggan, Esqs., McCarter & English, Esqs. and Friedland & Friedland, Esqs.
9-27-79	Substitution of attorneys on behalf of plaintiff, Local 334, etc. filed.
10-16-79	Consent Order directing Clerk of the court to refund to Craner & Nelson, Esq. the sum of $500.00 in lieu of preliminary injunction bond and to McCarter & English, Esqs. the sum of $500.00 in lieu of removal bond, filed 10-3-79. (Biunno) Notice mailed.
10-16-79	RECORD ON APPEAL SENT TO U.S.C.A. (NOTICE MAILED).
10-25-79	Transcript of hearing taken on 2-13-79, filed 10-24-79.

DATE	PROCEEDINGS
1- 9-80	Order directing Clerk of the court to refund $500.00, out of registry to Craner & Nelson, Esqs., filed. (Biunno) Notice mailed.
5- 7-80	First Supplemental record on appeal sent to U.S.C.A. (Notice mailed).
8-15-80	Opinion of the Court from U.S.C.A. filed 8-12-80. (Vacating judgment of the U.S. Dist. Court and remanding the case to the State Court.
8-25-80	Order remanding action to Superior Court of Morris County, filed 8-22-80. (Biunno) Notice mailed.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Case No. 79-2407

DOCKET ENTRIES

DATE	FILINGS—PROCEEDINGS
1979	
Oct. 9	Certified copy of Notice of Appeal, received September 20, 1979, filed.
Oct. 18	Record, filed. [TRANSCRIPTS IN EXHIBIT ROOM]
Oct. 18	Exhibits, filed. [EXHIBITS IN EXHIBIT ROOM]
Oct. 18	Appearance of Timothy R. Hott, Esq.; Friedland & Friedland, for appellees, United Association, Local 14 and United Association, Local 274, filed.
Oct. 18	Appearance of Richard C. Cooper, Esq.; McCarter & English, for appellees, United Association of Journeymen and Apprentices of the Plumbing & Pipe Fitting Industry of the United States and Canada, et al., filed.
Oct. 22	Appearance of Albert S. Parsonnet, Esq.; Parsonnet, Duggan & Pykon, for appellee, Plumbers Local 49, filed.
Oct. 31	Appearance of James R. Zazzali, Esq.; Zazzali, Zazzali & Whipple, P.A., for appellant, filed.
Nov. 29	Consent motion by appellant for leave to file brief and appendix 30 days out of time from November 27, 1979 (to December 27, 1979), filed. (4cc) Service attached.
Nov. 30	Submitted on above consent motion. Clerk.
Dec. 3	Order (Clerk) granting the above consent motion, with no further extensions, filed.

DATE	FILINGS—PROCEEDINGS
Dec. 27	Brief for appellant, rec'd January 2, 1980, filed. (25cc).
Dec. 27	Appendix, rec'd January 2, 1980, filed. (10cc).
1980	
Jan. 2	Certificate of service of appellant's brief and appendix by mail on 12/27/79, filed.
Jan. 21	Consent motion by respondents, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, et al., for leave to extend time to file brief to February 28, 1980, filed. (4cc). Service attached.
Jan. 21	Submitted on above consent motion. Clerk.
Jan. 22	Order (Clerk) granting the above consent motion, with no further extensions, filed.
Jan. 28	Brief for appellees, Local 274 and Local 14, rec'd January 30, 1980, filed. (25cc).
Jan. 30	Affidavit of service of appellees', Locals 274 and 14, brief by mail on January 28, 1980, filed.
Feb. 19	Letter dated February 14, 1980 from James R. Zazzali, Esq., counsel for appellant, requesting oral argument, rec'd for the information of the Court. (4cc).
Mar. 6	Consent motion by appellees, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, et al., for leave to file brief out of time by March 13, 1980, filed. (4cc). Service attached.
Mar. 6	Motion by appellees, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States

DATE	FILINGS—PROCEEDINGS
	and Canada, et al., for leave to file an appendix, in which it states that all counsel who have entered an appearance in this case have consented to the granting of this motion, with attachments, copy of February 13, 1979 transcript, filed. (4cc). Service attached.
Mar. 10	Submitted on above motion *and* consent motion. Clerk.
Mar. 10	Order (Clerk) granting the consent motion by appellees, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, et al., for leave to file brief out of time by March 13, 1980, with filing as of the date of this order, filed.
Mar. 10	Brief for appellees, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, et al., filed. (25cc). Service appears on page 46.
Mar. 11	Order (Clerk) granting the motion by appellees, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, et al., for leave to file an appendix, with filing as of the date of this order, filed.
Mar. 11	Appendix for appellees (incorporated within appellees' brief filed 3/10/80), United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, et al., rec'd March 10, 1980, filed. (25cc). Service appears on page 46.
Mar. 21	Consent motion by appellant for a 30-day extension of time from March 24, 1980 (to April 23, 1980) in which to file reply brief, filed. (4cc). Service attached.

DATE	FILINGS—PROCEEDINGS
Mar. 24	Submitted on above consent motion. Clerk.
Mar. 24	Order (Clerk) denying the above consent motion as presented; granting an extension of time to file reply brief for appellant to April 7, 1980; and stating that no further extensions will be granted, filed.
Apr. 7	Reply brief for appellant, rec'd April 9, 1980, filed. (2cc—23 add'l ccs rec'd 4/16/80). Service by mail on 4/7/80 attached.
Apr. 9	Motion by appellant for leave to file a supplemental appendix, treated as motion for leave to file supplemental appendix out of time, in which it states that all counsel who have entered an appearance in the within action have consented to the granting of this motion, with attachments, filed. (4cc). Service attached.
Apr. 10	Submitted on above motion. Clerk.
Apr. 11	Order (Clerk) granting the above motion, with filing as of the date of this order, filed.
Apr. 11	Supplemental appendix for appellant (incorporated within appellant's reply brief filed 4/7/80), rec'd April 9, 1980, filed. (2cc—Service by mail on 4/7/80 attached.
May 2	Clerk's letter to counsel, written at the direction of the Court, requesting counsel send a letter, original and three copies, with copy to their adversary, addressing the issue of subject matter jurisdiction in light of *Stelling* vs. *Intl. Bthd. of Elec. Workers*, 597 F.2d 1379; *1199 DC, Natl. Union of Hospital and Health Care Employees*, 175 U.S. App. D.C. 70, 533 F.2d 1205 (1976); *Smith* vs. *United Mine Workers*, 493 F.2d 1241 (10th Cir. 1974); All letters should be sent promptly since this case is listed for disposition on May 20, 1980.

DATE	FILINGS—PROCEEDINGS
May 8	Order (*Adams*, C.J.) directing 15 minutes oral argument time for each side, filed.
May 9	First Supplemental Record (Nos. 79 & 80), filed.
May 9	Letter dated May 7, 1980, from Timothy R. Hott, Esquire, counsel for appellees, Local 14 & 274, received in response to the Clerk's letter of May 2, 1980. (4cc). Service in letter.
May 13	Letter dated May 12, 1980, from Robert Matisoff, Esq., and Richard C. Cooper, Esq., counsel for appellees, United Association of Journeymen and Apprentices, etc., et al., received in response to the Clerk's letter of May 2, 1980. (4cc). Service in letter.
May 16	Letter dated May 14, 1980, from Timothy R. Hott, Esquire, counsel for appellees, Locals 14 & 274, advising that he has reconsidered his position on subject matter jurisdiction which he had offered in his letter of May 7, 1980, and request that the Court note that he now joins in with the position of counsel for appellees, United Association of Journeymen & Apprentices, etc., et al. (4cc). Service in letter.
May 16	Letter dated May 16, 1980, from James R. Zazzali, Esq., counsel for appellant, received in response to the Clerk's letter of May 2, 1980. (4cc). Service in letter.
May 20	Argued. Coram: Adams, Van Dusen & Higginbotham, C.J. (Appellee to file supplemental letter brief by May 29, 1980 re: factual basis for argument of subject matter jurisdiction. Appellant to respond by June 2, 1980.

DATE	FILINGS—PROCEEDINGS
May 29	Letter dated May 29, 1980, from Robert Matisoff, Esq., counsel for appellees, United Association of Journeymen and Apprentices, etc., et al., received at the direction of the Court *and* in which it states that Timothy Hott, Esquire, counsel for appellees Local 14 & 274 join in this statement of position. (4cc). Service in letter.
June 6	Post-Argument Memorandum for Plaintiff-Appellant, Local 334, received for the information of the Court at the direction of the Court. (4cc).
June 6	Letter, dated June 6, 1980 from Francis J. Vernoia, Esq., counsel for appellant noting Errata in Post-Argument Memorandum for Plaintiff-Appellant, Local 334, received at the direction of the court. (4 cc). Service attached.
June 6	Certificate of service of appellant's Post-Argument Memorandum by mail on June 6, 1980, filed.
Aug. 4	Opinion of the Court (Adams, *Van Dusen* and Higginbotham, C.J.), filed.
Aug. 4	Judgment vacating the judgment of the District Court filed August 20, 1979, and remanding the cause to the District Court with instructions to remand the cause to the state court from which it was removed, in accordance with the opinion of this Court, filed.
Aug. 18	Motion by appellee, United Association for Stay of the mandate pending application for certiorari, filed. (4 cc.) Certificate of service attached.
Aug. 20	Order (*Adams*, C.J.) staying the issuance of the mandate until November 2, 1980, filed.

DATE	FILINGS—PROCEEDINGS
Aug. 22	Opposition by appellant Local 334 to motion for stay of mandate pending application for certiorari, filed. (4 cc) Certification of service attached.
Aug. 28	Motion by appellant, Local 334 for Reconsideration of this Court's order of August 20, 1980 granting a stay of mandate to November 2, 1980, filed. (4 cc) Certificate of service attached.
Oct. 24	Order (*Adams*, C.J.) denying the motion by appellant Local 334 for reconsideration of this Court's order of August 20, 1980 granting a stay of mandate to November 2, 1980, filed.
Nov. 5	Notice of filing on October 31, 1980 of petition for writ of certiorari, rec'd from Clerk of the S.C., filed. (S.C. No. 80-710)
1981	
Jan. 28	Order—Cert. granted 1/26/81, filed. (S.C. No. 80-710).
Feb. 4	Second Supplemental Record (Nos. 81/82), filed.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MORRIS COUNTY

Docket No.

LOCAL 334, UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, an unincorporated association,

Plaintiff,

vs.

UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, AFL-CIO,

Defendant.

COMPLAINT—Filed August 22, 1977

Plaintiff, Local 334, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, having its principal office at 301 East Hanover Avenue, Morristown, Morris County, New Jersey, complaining of defendant, says that:

1. Plaintiff is a voluntary labor organization and is a local union affiliated with defendant, having been assigned a charter as a combination local for the basic area of Morris County, New Jersey.

2. Defendant is an international labor organization consisting of many local unions in New Jersey and elsewhere throughout the United States and Canada.

3. The relationship as between plaintiff and defendant is governed by a constitution, a copy of which is annexed here to as Exhibit "A".

4. Pursuant to Section 86 of said constitution after directing hearings be held by a representative of the General President, and after receiving the reports and recommendations from said hearing officer, the General President of the United Association, on August 10, 1977, issued an Order of Consolidation affecting, among other local unions, plaintiff. A copy of the Report and Recommendations of the Hearing Officer is annexed hereto as Exhibit "B" and a copy of the Order of Consolidation is annexed hereto as Exhibit "C".

5. Upon receiving the Order of Consolidation on Friday, August 12, 1977, Plaintiff forwarded to the General Executive Board of defendant a letter of appeal, a copy of which is annexed hereto as Exhibit "D". Said appeal has taken pursuant to sections 218(a), 219(a), 219(b), and 222 of the constitution aforesaid.

6. In said appeal, plaintiff requested a stay of the Order of Consolidation pending appeal since plaintiff had been notified by International Representative Francis Coyne that the implemented on Monday, August 15, charter and seal and cease functioning as Local 334.

7. Thereafter, on or about August 14, 1977, the membership of Local 334 was assembled and did ratify the appeal taken by the officers of Local 334.

8. On or about August 18, 1977, International Representative Coyne came to the offices of plaintiff and forcibly removed the charter and seal although fully aware of the pending appeal to the General Executive Board and the request for a stay, concerning which plaintiff had not received a reply.

9. On Friday, August 19, 1977, the membership of Local 334 again met and authorized the bringing of this suit to enjoin enforcement of the Order of Consolidation pending resolution of the appeal brought by plaintiff pursuant to the constitution aforesaid.

10. The effect of the present Order of Consolidation is to divide the membership of Local 334 into the categories of plumber and pipe fitter and to assign plumber members to Local 14 and pipe fitter members to Local 274.

11. Plaintiffs believe that such division of its membership is in violation of the constitution aforesaid and in particular Section 86, and does not constitute a consolidation of local unions. Plaintiffs desire to have the General Executive Board review this contention and also whether the General President has abused his discretion in making such an order.

12. At the present time plaintiffs have the exclusive contractual jurisdiction for all plumbing and pipe fitting work in the area of Morris County. As such, plaintiff refers out its membership without distinction as to whether they bear a plumber membership card or a pipe fitter membership card. The present Order of Consolidation, unless stayed pending exhaustion of all constitutional remedies, will result in deprivation of work opportunities in that plaintiffs' members will thereafter require to work under separate referral lists as either plumbers or fitters and through separate local unions.

13. There will be substantial and irreparable injury to plaintiffs' property and property rights as members of Local 334 unless defendant is restrained and enjoined from disbanding Local 334 and combining its members with locals 14 and 274 and preventing plaintiff from continuing to act as hereinbefore.

14. As to each item of relief granted, greater injury will be inflicted upon plaintiff and its membership by the denial of relief than will be inflicted upon defendant by the granting thereof. Plaintiff herein is merely seeking maintenance of the status quo until the issues which it

has raised on appeal to the General Executions Board have been resolved.

Wherefore, plaintiff demands judgment against defendant restraining and enjoining it and all persons working in concert or combination with it as follows:

A. From removing the charter and seal of plaintiff directing defendant to return to plaintiff said charter and seal until the further order of this Court;

B. Directing defendant to process the appeal of plaintiff and to allow plaintiff a full and fair hearing before said General Executive Board.

C. From obstructing and interfering in the affairs of plaintiff and from threatening its officers and members with expulsion and loss of membership in exercising their rights under the constitution aforesaid.

D. Such other and further relief as the Court deems fair and equitable in the cause.

CRANER & NELSON
Attorneys for Plaintiff

/s/ BY John A. Craner
JOHN A. CRANER

EXHIBIT A

[EXCERPTS FROM UNITED ASSOCIATION CONSTITUTION]

CONSTITUTION

NAME OF ORGANIZATION

SEC. 1. This organization shall be known as the UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, composed of journeymen and apprentices engaged in the supervision, fabrication, installation and maintenance of plumbing and pipe fitting installations of every description and character.

JURISDICTION

Trade and territorial jurisdiction

SEC. 2. The jurisdiction of territory of the United Association embraces the United States and Canada, and its trade jurisdiction shall include all branches of the pipe fitting industry. In it alone is vested the power to establish Local Unions, and its mandate must be obeyed at all times and under all circumstances. To the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada is reserved the right to decide all matters pertaining to trade and territorial jurisdiction of its affiliated Local Unions, and no Local Union is conceded territorial jurisdiction other than the current working day in said territory, while to Local Unions is conceded the right to make necessary by-laws and agreements for Local Union government which do not conflict with the laws of the United Association.

JURISDICTION OF WORK

SEC. 3. The United Association having full and exclusive jurisdiction over the plumbing and pipe fitting industry, including the supervision, fabrication, installation and maintenance of plumbing and pipe fitting installations of every description and character, shall be composed of journeymen and apprentices or any type of worker employed on any kind of work allied to or connected in any manner with the plumbing and pipe fitting industry.

The United Association shall charter three types of Local Unions: Building and Construction Trades Local Unions, Metal Trades Local Unions, and Combination Local Unions.

* * * *

CONVENTIONS

Regular Conventions

SEC. 11. Regular Conventions of the United Association shall be held once every five years. The date, time and place for holding the Convention shall be set and established by the General Executive Board. The General Secretary-Treasurer shall notify all Local Unions as to the city designated where the Convention will be held and the date the Convention will open.

CHARTERS

Local Unions

SEC. 81. The United Association shall issue charters to three classes of Local Unions: Building and Construction Trades Local Unions, Metal Trades Local Unions, and Combination Local Unions.

Building and Construction Trades Local Unions

SEC. 82. Membership in a Building and Construction Trades Local Union shall be composed of journeymen and apprentices qualified and eligible to work under the jurisdiction of the Building and Construction Trades Department of the AFL-CIO.

Combination Local Unions

SEC. 83. Membership of a Combination Local Union shall consist of qualified journeymen and apprentices eligible for membership in the jurisdiction of a Building and Construction Trades Local Union, and journeymen, apprentices and production workers eligible for membership in a Metal Trades Local Union.

Applications for Charters

SEC. 84. Charters shall not be issued for a Building and Construction Trades Local Union or for a Metal Trades Local Union or a Combination Local Union, in any city or town, unless there are at least eight (8) qualifying journeymen who make application for a charter. The application shall state the type and kind of Local Union to be chartered—whether it shall be a Building and Construction Trades Local Union, a Metal Trades Local Union, or a Combination Local Union. The names of the applicants shall be forwarded to the General Secretary-Treasurer who shall check such names from the records in the General Office and with the Local Unions in whose jurisdiction such applicants were formerly employed. The General Secretary-Treasurer shall furnish the necessary supplies without reference to the General Executive Board. The charter fee for each member shall be $3.00, the entire amount to be sent to the General Secretary-Treasurer.

* * * *

Consolidation of Locals

SEC. 86. Whenever, in the judgment of the General President, it is apparent that there is a superfluous number of Local Unions in any locality, and that a consolidation would be for the best interest of the United Association, locally or at large, he shall have the power to order Local Unions to consolidate and to enforce the consolidation of said Local Unions, or said territory in one or more Local Unions, provided such course received the sanction of the General Executive Board.

* * * *

Exhaustion of Remedies Within the United Association

SEC. 222. No officer, representative or member of the United Association or its Local Unions, or District Councils, or State or Provincial Associations shall resort to court proceedings of any description, in any matter pertaining to this organization or its Local Unions, or his membership, or his office, until all remedies provided for within the United Association's Constitution have been fully exhausted.

* * * *

Changes in Constitution

SEC. 224. No part of this Constitution shall be suspended at any time, nor can it be amended, except at Conventions or by referendum vote, as provided in following sections.

Referendum Amendments

SEC. 225. Any Local Union may by a majority vote propose an amendment to this Constitution. Such proposed amendment shall be published in the official Journal, where arguments may be made for or against it for at least three issues. If, within sixty days from date of first publication of proposed amendment, 25 per cent of total good standing membership of the U.A. endorse the same, the amendment shall be submitted by the General Secretary-Treasurer for a general vote of the entire membership at the next regular meeting night. Each Local Union shall vote by secret ballot (yes or no) on the amendment as submitted and shall immediately make returns of vote actually present and voting secretly.

SEC. 226. The General Secretary-Treasurer shall compile and publish the returns in the Journal, and it shall require 55 percent majority of the members voting to carry an amendment, and no amendment shall be considered adopted if less than 55 per cent of the total membership vote. Amendments so adopted shall take effect upon their passage or as specified in the amendment.

* * * *

EXHIBIT B

REPORT AND RECOMMENDATIONS OF HEARING OFFICER PHILIP S. COYNE CONCERNING THE CONSOLIDATION OF LOCAL UNIONS IN NORTHERN NEW JERSEY—Dated July 25, 1977

I was appointed Hearing Officer by General President Martin J. Ward to conduct a hearing as to whether an order of consolidation should be issued consolidating those United Association local unions located in Northern New Jersey in the following manner:

> Consolidation of Fitters Local 765 (Passaic) into Fitters Local 274 (Jersey City) and the transferring of the fitter members of three combination locals, Local 49 (Patterson), Local 334 (Morristown) and Local 523 (Dover) into Fitters Local 274.
>
> Consolidation of Plumbers Local 84 (North Hudson), Plumbers Local 124 (Passaic) and Plumbers Local 326 (Hackensack) into Plumbers Local 14 (Jersey City) and the transferring of the plumber members of three combination local unions, Local 49 (Patterson), Local 334 (Morristown) and Local 523 (Dover) into Plumbers Local 14.
>
> The establishment and chartering of a separate Metal Trades local union for the approximately 1500 metal trades members of Fitters Local 274 who are employed by the New Jersey Public Service Electric and Gas Company.

A hearing was conducted by me at the Sheraton Heights Hotel, Hasbrouck Heights, New Jersey, on May 10, 1977, at 10:00 A.M. The following individuals were present:

United Association:

Francis J. Coyne, International Representative

Local 14:

Thomas Brennan, Business Manager
Robert J. O'Neill, President

Local 49:

George Baskinger, plumber
Joseph Baskinger, Executive Board
Thomas Della Cave, Business Manager
John Goodwin, Executive Board
James Grant, President
Edward R. Kelly, Conference Board
John Kuligowski, Recording Secretary
Jack McAteer, Conference Board
John Montesano, retiree
Ralph Perricelli, plumber
Barney Shaban, Chairman, Board of Trustees
Arnold Spoust, Vice President
James Tummino, Executive Board

Local 84:

Joseph Coniglio, Vice President
Robert Free, Executive Board
John J. Harvey, Business Representative
Joseph Maturo, President
Joseph Ofmani, Executive Board
Ferris O. Tyron, Executive Board
Richard Wilson, Financial Secretary

Local 124:

William Albanese, President
Bertram Harrop, plumber
Louis Marzitelli, Financial Secretary
Patrick Perno, Executive Board
D'Arcy Richardson, Business Manager
Edward Zoon, Vice President

Local 274:

Robert Ackermann, Executive Board
Robert H. Callahan, President,
Southern Division
Clifford A. Clancey, Executive Board
Louis Daniele, Vice President, Orange District
F. DeGruttalo, Vice President, Bergen Division
George S. Flynn, President, Orange District
James R. Frees, Business Agent
Thomas M. Hennessy, Vice President,
Central Division
Charles Kidney, Executive Board
J. Stewart Kidney,
Financial Secretary-Treasurer
Carl G. Leckburg, President, Passaic Division
John J. McNulty, Business Manager
Lawrence W. Murphy, Business Agent
Edward J. Nagelmeyer, President
John Prisco, Vice President
Al Puget, Vice President, Passaic Division
Patrick D. Ryan, President, District Council
Martin Schlindwein, Vice President,
Southern Division
James R. Seppi, President, Bergen Division
C. Russell Simpkins, Jr.,
Business Representative
Thomas Stiles, Business Agent
James Taylor, Executive Board

Local 326:

Ed Kiel, Executive Board
Lawrence Lyons, Financial Secretary
Ed Smida, President
Robert G. Terry, Vice President
Clifford T. Williams, Business Agent
Alexander Wyllie, Executive Board

Local 334:

John A. Boniface, steamfitter
Robert Glennon, Executive Board
Richard E. Purtell, plumber
Joseph Rooney, plumber
William F. Wibbelt, Jr., President

Local 523:

Edward L. Baker, Jr., Executive Board
Robert A. Garrison, Sr., Executive Board
Jerry Ginder, Executive Board
Harold Leddy, Business Manager
H. A. Meyers, Jr., steamfitter
L. Parks, steamfitter
A. Picone, plumber
F. Quayle, concerned person
G. D. Smith, President
Wilbur G. Swayze, Vice President
R. Whitmore, steamfitter

Local 765:

James J. Faulkner, Business Manager
John J. Gordon, Jr., Executive Board
William F. Golden, Jr., Executive Board
Henry Hazen, President
Ken Leach, Executive Board
John Uszynski, Jr., Vice President
Peter H. Veretoni,
Financial Secretary-Treasurer

The spokesman for each local was given a full opportunity to present any oral or written rebuttal to the case presented by International Representative Francis J. Coyne in favor of the proposed consolidations. Also, at the end of the formal presentations, all those present were given the opportunity to present any other statements that they felt might influence my recommendations.

International Representative Coyne was first to testify. Briefly summarizing his presentation, International Representative Coyne stated there was a superfluous number of local unions in Northern New Jersey. Consolidation, he argued, would help solve many of the problems which have beleagured these locals, such as unemployment, lack of reciprocity among local fringe benefit funds and the increasing loss of work to non-union contractors. He explained his proposal to split up some existing combination local unions by pointing out that, from past experience in large metropolitan areas (like Northern New Jersey), the United Association has found that its jurisdiction is best protected by straight line local unions. Furthermore, straight line locals located in the same area generally engage in healthy competition between themselves.

International Representative Coyne's presentation was followed by that of Local Union 14. According to the report of International Representative Coyne and Spokesman Thomas Brennan, Business Manager, Local 14 has agreed to all of the terms of the consolidation as outlined by International Representative Coyne. Business Manager Brennan reported that he had been party to a number of meetings between the officers of the involved locals but, unfortunately, they never have been able to devise a formula for voluntary consolidation. He completed his statement by stating that he and the members of Local 14 concurred in the recommendations of International Representative Coyne.

Business Manager Thomas Della Cave was the spokesman for Local 49, a combination local of Paterson, New Jersey. Brother Della Cave made a very articulate presentation of the objections in his organization to the consolidation plan as outlined by International Representative Coyne. His statement shows that the United Association has made several overtures to Local 49 to

attempt voluntary consolidations with several of its sister locals since 1972. Each attempt met with failure because the officers and members of Local 49 did not feel that the consolidations would be to their benefit. Brother Della Cave talked about the advantages of combination locals over straight line locals and argued that combination locals, such as Local Union 49, should not be split up. As a Business Manager of a combination local for the past 17 years, I found some appeal in his arguments. However, I must agree with General President Martin J. Ward's statement at the May, 1977 Purdue Conference that combination locals often cannot adequately control jurisdiction and the manning of our bread and butter work. Jurisdiction often breaks down when a large industrial job or power house comes into the territory of such a local. The very make up of a small combination local frequently forces the Business Agent to yield to the wishes of his members and to refer a man to such a job without regard to whether he is a fitter, repair man, refrigeration man or a plumber and qualified to perform the particular job in question.

Brother Della Cave classifies Local 49's pension and welfare plans as among the best in the State. After reviewing both plans, I have no question that they extremely liberal in their benefit structures. However, as a Trustee of funds for many years, I must question the ability of small organization, such as Local 49, to sustain the liberal benefits allowed at this time, particularly in view of the substantial number of retirees within the local and a work force of only 240 active members.

Brother Della Cave complained that the proposed division of existing combination locals might result in forcing members of the same family into different locals, since a father might be a fitter and a son a plumber within the same local. I believe International Representative Coyne adequately answered that argument when he stated that he would give personal consideration to

any reasonable request for a change of trade classification. Finally, Brother Della Cave also talked of the progressiveness of Local 49; for example, he stressed the early retirement provisions of its pension plan encouraged members of Local 49 to retire early and make room for new members. However, the record seems to contradict Brother Della Cave's comments with regard to the local's progress. Only 40 apprentices have been active in the local's apprentice training program since 1972, an average of eight apprentices a year. The record also shows Local 49 has only taken in five journeymen in the past five years. Local 49 does not have any training facilities of its own nor does it own any property. Its funds do not participate in reciprocity agreements with any of its sister locals. Local 49 has made no effort to implement a speculative housing agreement.

The spokesman for Plumbers Local 84 of North Hudson, New Jersey, John H. Harvey, Business Agent, made a brief statement. His statement was a plea for reciprocity of funds, and he ended it by concurring on behalf of his membership in the recommendations of International Representative Coyne.

D'Arcy Richardson, Business Manager of Plumbers Local 124 of Passaic and spokesman for his local at the hearing, made a statement favoring consolidation but not in the particular form presented by International Representative Coyne. He favored creating new combination locals rather than straight line locals. He also pointed out that Local 124 has had trouble maintaining full employment. Finally, as Brother Richardson admitted, he has been unable to get the cooperation of his sister locals in implementing a speculative housing agreement.

John J. McNulty was the spokesman for Fitters Local 274 of Jersey City, New Jersey. Brother McNulty made a statement favoring straight line locals over combina-

tion locals and ended his statement by concurring with the recommendations of International Representative Coyne for the consolidations as outlined at the beginning of this report. He also placed several exhibits in the record supporting the consolidation.

Clifford Williams, Business Agent for Plumbers Local 326 of Hackensack, New Jersey, acted as spokesman for his local. He stated that, though his membership felt that they had been progressive over the years and were saddened at the prospect of losing their separate identity as a local union, nevertheless they did support the recommendations of International Representative Coyne.

William Wibbelt, President of combination Local 334 of Morristown, New Jersey, acted as spokesman for his local. Brother Wibbelt voiced his opposition to the consolidation plan of the United Association and offered a plan of his own. He spoke with considerable pride about the progress his local has made over the years. Local 334 is one of the few smaller locals that does have its own training facilities and is party to some reciprocal agreements. They have implemented a speculative housing agreement. However, even with their own training facilities, they have only graduated 16 apprentices in five years. They have had as many as 348 travelers in one year and the lowest number of travelers in five years has been 116. Yet the record shows that they have only taken 22 journeymen into membership in that period of time. Thus, I would have to question how much progress the local has actually made.

Harold Leddy, Business Manager of combination Local 523, acted as spokesman for his organization. He stated that Local 523 was not against consolidation, but objected to splitting up combination locals. Brother Leddy referred to a letter addressed to International Representative Coyne which related that members of Locals 300, 309 and 523, at separate meetings, had voted to

merge, provided that they received the approval of the General Office. The letter points out that this would create a combination local of 450 members. The letter does not say how many retirees would be part of this 450-man local. The combined territory of this group would come to about 1300 square miles. Local 523 has had from 304 to 49 travelers working in its jurisdiction over a five year period but has only admitted four people to membership in that period. Brother Leddy also pointed out that Local 523 was willing to sign reciprocity agreements, provided that the locals requesting the agreements have the same contribution rate as Local 523.

James Faulkner, Business Manager of Fitters Local 765, acted as spokesman for his local. Brother Faulkner, on behalf of the members of his local, concurred in the recommendations of International Representative Coyne.

Following a luncheon recess, I reconvened the hearing and advised those present that I would accept any statements for the record. Several of those members present offered brief statements. The President of Local 49, Brother Grant, stated that he did not feel that his local had had sufficient time to prepare its briefs. I suggested that, if Local 49 had any further briefs, it could get them to me as soon as possible. As of the writing of this report, I have not received any further information from Local 49.

Spokesmen for all of the locals acknowledged for the record that they felt they had had a fair hearing. With these acknowledgements, the hearing was concluded.

Section 86 of the United Association Constitution provides that, whenever in the judgment of the General President it is apparent that there is a superfluous number of local unions in any locality and that a consolidation would be for the best interest of the United Association, locally and at large, he shall have the power to order local unions to consolidate and to enforce the

consolidation of said local unions, or said territory in one or more local unions, provided such course receives the sanction of the General Executive Board.

I have reviewed the transcript of the testimony and all documents presented at the hearing. Based on the record before me, I conclude that the consolidations proposed by International Representative Coyne would be in the best interests of the United Association, and I recommend that they be ordered by the General President.

There is no question that there is a superfluous number of locals in Northern New Jersey. For example, the two existing straight line fitter locals and the four straight line plumbers locals are all located within a geographic area of only 195 square miles. Consolidations as proposed by International Representative Coyne will allow members of these locals to obtain work throughout a much larger geographic area, thereby increasing their work opportunities.

Union contractors operating in Northern New Jersey will be made more competitive by the consolidations, since they will be enabled to enjoy greater freedom of movement throughout larger geographic areas than before. The stabilization of wage and fringe benefit rates that would result from the consolidations will also make the climate more favorable for union contractors. As union contractors become more competitive, so the work opportunities of United Association members increase. Moreover, as a result of the benefits that may be expected from the consolidations, non-union contractors operating in the area may themselves be more inclined to use union help.

From my study of the various benefit plans of the local unions involved, it appears that many of these plans may be in financial trouble at the present time or in the very near future. With consolidation of the

locals and the consolidation of the local funds that is likely to follow, the benefit rights of members would be better protected. Also the consolidations would eliminate the threat to accrued benefit rights of many of the members of these locals, as well as travelers from other geographic areas, resulting from the refusal of the funds of these locals to enter into reciprocity agreements with other funds.

Other advantages would result from the consolidation. Saving in administrative expenses for these locals could be expected. The two large consolidated straight line locals would be able to afford the costs of sending full time officers out into the field, thus better protecting the trade jurisdiction of the United Association in Northern New Jersey.

As stated earlier, I find it difficult not to be in sympathy with the arguments presented at the hearing against the splitting up of combination locals. In the past, combination locals were the answer to organizing rural areas. Unfortunately, the record of the combination locals in Northern New Jersey has not proven satisfactory. The record shows a history of little growth among these locals and little accomplished to protect the work jurisdiction of our trade. In my view, straight line locals are better equipped to man the large industrial jobs, which now provide work for so many United Association members. Because the largest part of the geographic area involved is industrial, I believe that the two straight line building trades locals proposed by International Representative Coyne would be better suited to protect our trade jurisdiction in these days of increasing non-union competition.

The local unions involved in these consolidations have been offered over the past several years many opportunities by the United Association to work out on a voluntary basis acceptable consolidation proposals. Un-

fortunately, as International Representative Coyne has stated, no real effort was apparently made until after the January 6, 1977 meeting of the New Jersey Pipe Trades, at which time the Chairman of that organization, Brother McNulty, reported that General President Ward had stated that the local unions in New Jersey had thirty days to present their own consolidation plans. The locals that then agreed on consolidation plans did not have enough members to form a sound organization. Thus, in my view, the consolidations suggested by International Representative Coyne are the only solutions to the problems plaguing the area.

Accordingly, for all of the above reasons, I recommend to the General President that a consolidation order be issued as provided in Section 86 of the United Association Constitution, directing and ordering that Fitters Local 765 (Passaic) be consolidated with Fitters Local 274 (Jersey City), and that Plumber Local 84 (North Hudson), Plumbers Local 124 (Passaic) and Plumbers Local 326 (Hackensack) be consolidated into Plumbers Local 14 (Jersey City); and, further, that the fittter members of the three combination locals, Local 49 (Paterson), Local 334 (Morristown) and Local 523 (Dover) be transferred into Fitters Local 274 (Jersey City); and that the plumber members of Local 49, Local 334 and Local 523 be transferred into Plumbers Local 14 (Jersey City). This would result in a plumbers union having a membership of 1051 and a fitters union having a membership of 1254, each with a territorial jurisdiction of over 1500 square miles.

After the building trades organizations had presented their positions, I asked International Representative Coyne to present his arguments for the chartering of a separate metal trades local for the gas fitters members of Local 274 of Jersey City employed by the Public Service Electric and Gas Company of New Jersey. Brother

Coyne stated that he had recommended a separate chartered metal trades local for the gas fitters because it would benefit the metal trades members of Local 274. For example, under a separate charter, these members would enjoy the right to elect their own officers, the right to conduct their own business and the right to organize and expand their organization. They could strengthen their organization by affiliation with other gas fitter organizations in New Jersey and other locals throughout the country, taking advantage of the resolution adopted at the last United Association Convention establishing a separate gas section within the United Association. According to International Representative Coyne, the granting of a charter to the metal trades members of Local 274 would be in both the best interest of the members of the Metal Trades Division and the best interests of the United Association.

Patrick Ryan, President of the Local 274 Gas Workers District Council, acted as spokesman for the 1500 members of the Metal Trades Division of Local 274. He reported that the members of the Metal Trades Division of Local 274 were opposed to the termination of their membership in Local 274. He also voiced concern over what metal trades members considered to be their vested right in the financial structure of Local 274.

Brother McNulty, Business Manager of Local 274, then made a statement for the record. He stated that at no time had the members of the Metal Trades Division of his local interferred in any way in the operation of the local and that there had been a harmonious relationship between the building trades members of Local 274 and the metal trades members. However, he did state that if, in the view of the General President, a separation of the Building Trades and the Metal Trades Divisions was in the best interest of the United Association, he would abide by that decision and hoped that

everyone would also accept it and continue to work in harmony.

At the end of his statement, I asked Brother McNulty to obtain a breakdown of the finances of Local 274 between the Building Trades Division and the Metal Trades Division for the past five years. He assured me he would. I received the financial statement on May 13, 1977. The financial statement shows a substantial deficit over a ten year period within the Metal Trades Division.

I concur in the recommendation of International Representative Coyne that the chartering of a separate metal trades local for the metal trades members of Fitters Local 274 of Jersey City would be in the best interest of those members as well as the United Association. I would also recommend that Local 274 assist the newly chartered metal trades local and that meetings be held with the officers and Council members of the metal trades group to explain the reasoning behind such a move and to fully inform them of the many benefits they would derive as a result.

Dated this 25 day of July, 1977.

/s/ Philip S. Coyne
PHILIP S. COYNE
Hearing Officer

EXHIBIT C

ORDER OF CONSOLIDATION OF LOCALS 14, 49, 84, 124, 274, 326, 334, 523, 765

As General President of the United Association, under the provisions of Section 86 of the United Association Constitution, I am herewith adopting the Report and Recommendation of Hearing Officer Philip S. Coyne, approving and recommending the consolidation of Local 765 (Passaic, New Jersey) as well as the pipefitter members of Local 49 (Paterson, New Jersey), Local 334 (Morristown, New Jersey) and Local 523 (Dover, New Jersey) into Pipefitters Local 274 (Jersey City, New Jersey). Hearing Officer Coyne also recommended a consolidation of Local 84 (North Hudson, New Jersey), Local 124 (Passaic, New Jersey) and Local 326 (Hackensack, New Jersey) as well as the plumber members of Locals 49, 334 and 523 into Plumbers Local 14 (Jersey City, New Jersey). Hearing Officer Coyne also recommended the establishment and chartering of a separate metal trades local union for the approximately 1500 metal trades members of Pipefitters Local 274 who are employed by the New Jersey Public Service Electric and Gas Company. A copy of Hearing Officer Coyne's Report is attached to this Order and made a part hereof.

A hearing was conducted on May 10, 1977, at the Sheraton Heights Hotel, Hasbrouck Heights, New Jersey, by Hearing Officer Coyne pursuant to my direction, as General President. Each local union was served with timely notice of the hearing. Representatives for each local appeared and were afforded an opportunity of presenting evidence regarding the proposed consolidations. International Representative Francis J. Coyne, who is unrelated to the Hearing Officer, was also present and presented evidence.

I hereby adopt the findings, conclusions and recommendations of Hearing Officer Coyne and, as General

President, I conclude and find that there are a superfluous number of local unions in the northern part of the State of New Jersey and that it is in the best interests of the United Association, both locally and at large, as provided by Section 86 of the United Association Constitution, that Local 765, as well as the pipefitter members of Locals 49, 334 and 523 be consolidated into Pipefitters Local 274, that Locals 84, 124, 326 as well as the plumber members of Locals 49, 334 and 523 be consolidated into Plumbers Local 14, and that a separate metal trades local union be established for the approximately 1500 metal trades members of Pipefitters Local 274 who are employed by the New Jersey Public Service Electric and Gas Company.

Accordingly, as General President, with the consent and approval of the General Executive Board, I hereby order and direct that the trade and territorial jurisdiction of Local 765 and the trade and territorial jurisdiction over pipefitting only of Locals 49, 334 and 523 shall be consolidated into Local 274, effective the 15th day of August, 1977, and that all members of Local 765 and the pipefitter members of Locals 49, 334 and 523 shall be transferred into Local 274 as of that date.

I hereby order and direct that the trade and territorial jurisdiction of Local Unions 84, 124, 326 and the trade and territorial jurisdiction over plumbing only of Local Unions 49, 334, and 523 shall be consolidated into Plumbers Local 14, effective the 15th day of August, 1977, and that all the members of Local 84, 124 and 326 as well as the plumber members of Locals 49, 334 and 523 shall be transferred into Local 14 as of that date.

I further order and direct that all the monies and financial assets of Local 765 shall be turned over to Local 274 and Local 274 shall assume all bona fide debts and liabilities incurred by Local 765 up to the effective date of the consolidation. I order and direct that all the monies and financial assets of Local Unions 84, 124 and

326 shall be turned over to Local 14 and Local 14 shall assume all bona fide debts and liabilities incurred by Local 14 up to the effective date of the consolidation.

With respect to the monies and financial assets of Local Unions 49, 334 and 523, I order and direct that the monies and assets of these local unions shall be divided on an equitable basis and turned over to Locals 274 and 14. Locals 274 and 14 shall meet and agree on an equitable division that shall be subject to the approval of the General President. Local Unions 274 and 14 shall assume all bona fide debts and liabilities incurred by Local Unions 49, 334 and 523 up to the effective date of the consolidation. All contractual obligations of Local Unions 49, 334 and 523, including existing collective bargaining agreement or agreements, shall be assumed and carried out by Locals 274 and 14.

I order and direct that a charter shall be issued for a metal trades local union, namely Metal Trades Local 855, and that the approximately 1500 metal trades members of Local 274 employed by the New Jersey Public Service Electric and Gas Company shall be transferred to this newly established metal trades local union effective the 15th day of August, 1977. The newly chartered metal trades local union shall assume the existing collective bargaining agreement with the New Jersey Public Service Electric and Gas Company. Local 274 and its officers are directed to assist the newly chartered Metal Trades Local 855 and International Representative Coyne is directed to meet with the representatives of the metal tradesmen and with representatives of Local 274 to work out the details involved in the establishment of the newly chartered Metal Trades Local 855. Any disputes arising out of the chartering of Metal Trades Local 855 between Local 855 and its members and Local 274 that are not resolved shall be submitted to the General President for a decision.

To insure that the consolidation does not adversely affect the existing fringe benefit rights of members of the locals to be consolidated, the welfare, educational, vacation and industry funds, if any, of the locals to be consolidated shall not be finally consolidated until a plan for consolidation has been first reviewed and approved by International Representative Coyne.

With respect to the pension funds of each local union, the Martin E. Segal Company, the pension consultant to the United Association, has developed procedures to be followed in effectuating a consolidation of pension funds. International Representative Coyne is directed to call these procedures to the attention of the officers of the consolidated Locals 274 and 14 and to the Boards of Trustees of each of the respective pension funds. To effectuate a consolidation of the pension funds and to insure that a consolidation of the funds is accomplished without reducing any benefits accrued to the participants, International Representative Coyne is directed and authorized to take any and all actions necessary to effectuate a consolidation of the pension funds of the locals involved in the consolidation. The plan for consolidation that is finally developed shall be subject to being reviewed and approved by the General President prior to being placed in effect.

Pending the adoption of a plan for the consolidation of the respective fringe benefit funds and/or an actual consolidation of the fringe benefit funds, such as the welfare funds, the pension funds or the educational funds, contributions to each respective fringe benefit fund for employees who are employed in the present territorial jurisdiction of one of the local unions to be consolidated shall be made to the fund or funds of that local union. It is anticipated that a plan for consolidation of the welfare and educational funds can be developed and implemented within a short period of time. A

consolidation of the pension funds is a more complicated process and will require a longer period of time. Until a plan of consolidation is developed and/or an actual consolidation of the pension plans is effected by the Boards of Trustees, contributions will continue to be made to each of the pension funds as outlined above. In issuing this Order of Consolidation, I am specifically reserving the right to issue whatever further directives and orders that may be necessary to effectuate a consolidation of the fringe benefit funds, particularly the pension funds.

The amount of dues that the members of the locals to be consolidated presently pay to their local unions shall be paid to Local 274 and Local 14 as of the effective date of the consolidation. Thereafter, members shall continue to pay their current rate of dues to Local 274 and Local 14 until Locals 274 and 14, pursuant to the applicable provisions of their constitutions and by-laws and Section 136(b) of the United Association Constitution, change the amount of dues for former members of Local Unions 49, 84, 124, 326, 334, 523 and 765.

Certain members of the local unions involved in these consolidations have been employed for varying periods of time on work that is not within the work jurisdiction of their trade classification. Where such members can establish that they have the requisite experience and qualifications for another trade classification, for example, from plumber to steamfitter. As General President, I am authorized to develop a procedure for processing requests for a change of trade classification by members of the local unions involved in these consolidations.

In view of the complexities of these consolidations and the fact that several local unions are being consolidated into one local union, as General President I am authorized to appoint temporary officers for Locals 274, 14 and the newly chartered metal trades local union, who shall serve until such time as the General President directs

that an election of officers be held. The election of officers shall be held no later than one year from the date of this Order of Consolidation.

I hereby direct International Representative Coyne to take any and all actions and steps he deems necessary to conclude the consolidations and the chartering of Metal Trades Local 855 set forth above in this Order of Consolidation.

Dated this 4th day of August, 1977.

/s/ Martin J. Ward
MARTIN J. WARD
General President

[CERTIFICATION OF WILLIAM F. WIBBELT, JR.—
Filed August 26, 1977]

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
NORRIS COUNTY

Docket No.

LOCAL 334, UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING & PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, an unincorporated association,

Plaintiff,

vs.

UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, AFL-CIO.

Defendant.

CERTIFICATION

WILLIAM F. WIBBELT, JR. does hereby certify as follows:

1. I am the Business Manager of Local 334, United Association, the plaintiff in this action and am fully authorized by the membership of said local union to make this affidavit.

2. I have read the allegations contained in the Amended Complaint. The facts contained therein are true and are within my own personal knowledge. I incorporate the allegations of the Amended Complaint herein as if each such allegation was set forth in detail.

3. When we appeared in Court on Tuesday, August 23, 1977, counsel for the International indicated that, insofar as the International General Executive Board was concerned, there was no appeal which could be taken

from the Order of Consolidation issued by the General President and which was based in part upon a certain hearing conducted on May 10, 1977 and a Report and Recommendation of Philip S. Coyne (Exhibit "B").

4. I would like to call attention to the transcript of the hearing held before Mr. Coyne and in particular his statement to all local unions who attended, as follows:

> Mr. Coyne: Consolidation of Locals: Section 86. Whenever, in the judgment of the General President it is apparent that there is a superfluous number of Locals in any locality, and that a consolidation would be for the best interests of the United Association, locally or at large, he shall have the power to order Local Unions to consolidate and to enforce the consolidation of said Local Unions, or said territory in one or more Local Unions, provided such course received the sanction of the General Executive Board.
>
> And may I note there are appeals to the General President's decision if he decides to have consolidation. (Pg. 16, Lines 8-21)

5. With respect to our efforts to effectuate a voluntary consolidation, when International Representative Coyne announced his plan for consolidations, he advised myself and other business agents that if we could come up with our own plan of consolidation within the specified time period, that plan would be given consideration.

6. There are several local unions which surround Local 334. They are: Local 49, Paterson, New Jersey, a combination local (covering 269 square miles); Local 765, Passaic, New Jersey, a fitter local (14 square miles); Local 124, Passaic, New Jersey, a plumber local (14 square miles); Local 523, Dover, New Jersey, a combination local (923 square miles); and Local 334, Morris County, a combination local (135 square miles).

Our proposed consolidation would thus create a new territory of Morris, Passaic and Sussex Counties, an area which has acted in concert for many years.

7. Accordingly, within the time limitations specified by Representative Coyne, we petitioned the General President for a consolidation of the aforesaid locals and territories into Local 334 as a combination local. A copy of that petition is annexed hereto as Exhibit "E". This petition was again presented at the hearing of May 10, 1977. To date, neither a response nor consideration of this proposal has been received.

8. On May 16, 1977, Local 334, along with other locals telegramed the General President requesting a meeting and Objecting to the splitting up of combination locals. A copy of that telegram is annexed hereto as Exhibit "F".

9. On June 2, 1977, a follow-up letter to the telegram of May 16, 1977 was forwarded to the General President, a copy of which is annexed hereto as Exhibit "G". No reply to either the telegram or letter has ever been received.

10. The membership of Local 334, as well as myself, believes that the larger "straight line" fitter locals in New Jersey, Locals 274 and 475, because of their largeness and political position with respect to the International have influenced this so-called consolidation. We feel we have not been fairly treated. Our local has existed for 70 years and grown with Morris County. As was so aptly stated by Representative Coyne at the May 10, 1977 hearing, the future of the United Association in North Jersey is in the west. How then can it possibly be said that our local is "superfluous"? The dictionary defines "superfluous" as meaning "beyond what is required or sufficient; extra". Why is it any more or less superfluous to have one local union in the entire State of New Jersey or 10 or 20?

11. Common sense dictates that with an area of approximately 1,355 square miles the existence of at least one local union cannot be said to be superfluous, especially if that area contains a total of between 800 and 1,000 journeymen. My experience is such that at least 5 business agents would be necessary to police and protect such an extensive territory.

12. Section 86 of our Constitution was never intended to accomplish that which is sought to be accomplished. It was designed to combine locals covering the same territory or duplicating the same services. It seems rather strange to find my local, which occupies one entire county virtually by itself as being superfluous, and yet at the same time leave two local unions (14 and 274 in Jersey City and 24 and 475 in Newark) remaining.

13. Furthermore, and perhaps even more importantly, is the fact that under the Order of Consolidation, Local 334 is to be *split up* with those members who bear a "plumber" card going to one local (14) and those who bear a "fitter" designation going to another local (274). Yet these men, adept at *all* phases of our craft, will now be deprived of being referred out for either craft since local 14 and 274 compete with each other. How, then, can it be said that our local is being "combined" under these circumstances when the Constitution itself does not even recognize such charters or division of work. Rather, the emphasis is upon a local of *both* plumbers and fitters —a designation only of that of a journeymen—building and construction trades; one qualified in all branches of the craft. In fact, that is exactly how the apprentice program in Local 334 operates.

14. As far as working conditions are concerned, most of the contractors we deal with circulate in the Morris, Passaic and Sussex County areas. There are, of course, contractors who travel the entire State, but mainly, Hudson and Bergen County contractors do not venture

into our areas and our contractors do not venture into those territories as a general rule.

15. The unemployment problem is not a valid basis for this type of consolidation. First of all, lumping everyone together into two locals will not create more jobs. In fact, our members, who can work at either branch of the trade, will now be confined to only one branch and thus loose job opportunities. Nor does this proposed set-up in any way protect the jurisdiction of the United Association, and I am at a complete loss to understand this conclusion reached by the Hearing Officer. If anything, a combination local is best equipped to protect the jurisdiction of the United Association.

16. With respect to the irreparable injury which will ensue, I respectfully refer to my original affidavit. The loss of job opportunities and the sharing of assets would be impossible to calculate. There simply is no adequate remedy at law.

17. With respect to the threats made against myself and my members I annex hereto as Exhibit "H" a telegram from Representative Coyne which is self-explanatory. The institution of this action is a decision of the entire membership of Local 334. They should be entitled to their day in Court free of restraint and free of threat.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

/s/ William F. Wibbelt, Jr.
WILLIAM F. WIBBELT, JR.

Dated: August 24, 1977

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Civil Action No. C-4637-76E

UNITED ASSOCIATION, LOCAL NO. 334,
Plaintiff

v.

UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, AFL-CIO,
Defendant

PETITION OF DEFENDANT FOR REMOVAL—
Filed August 25, 1977

Your Petitioner, the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO (hereinafter "United Association"), a labor organization representing employees in an industry affecting commerce, respectfully states to this Court that it is named as a Defendant in a civil suit which was filed in the Superior Court of New Jersey, Chancery Division, Morris County (Civil No. ———) and that service of the Complaint was effected on Defendant on August —, 1977. The Plaintiff in this case in Local 334 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada (hereinafter "Local 334"), a labor organization representing employees in an industry affecting commerce.

Plaintiff's suit filed in the Superior Court of New Jersey, Chancery Division, Morris County, seeks a judgment interpreting the rights of the parties pursuant to the Constitution of the United Association. Said Constitution is a contract agreement governing the rights, duties and relationship of the parties to this lawsuit.

Therefore, the cause of action herein is an action for violation of a contract between labor organizations representing employees in an industry affecting commerce arising under Section 301 of the Labor Management Relations Act of 1947, as amended, 29 U.S.C. § 185(a).

The cause of action in this case is within the original jurisdiction of this Court, and this suit is founded on a claim of right arising under the Constitution, treaties or laws of the United States. Attached hereto are copies of all pleadings that have been filed in this case.

WHEREFORE, Petitioner prays this Court to take jurisdiction of this Petition and issue all necessary orders and process in order to remove the above captioned case from the Superior Court of New Jersey, Chancery Division, Morris County, to the United States District Court for the District of New Jersey.

Respectfully submitted,

FRIEDLAND & FRIEDLAND
591 Summit Avenue
Jersey City, New Jersey 07306

By /s/ David Freidland per JAM
DAVID FRIEDLAND

O'DONOGHUE & O'DONOGHUE
1912 Sunderland Place, N.W.
Washington, D.C. 20036

By /s/ Patrick C. O'Donoghue per JAM
PATRICK C. O'DONOGHUE

/s/ Joyce Mader
JOYCE MADER

Attorneys for Defendant

[Verification and Certificate of Service omitted in printing]

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MORRIS COUNTY

Docket No. C-4337-76E

LOCAL 334, UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING & PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, an unincorporated association,

Plaintiff,

vs.

UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, AFL-CIO.

Defendant.

AMENDED COMPLAINT—Filed August 26, 1977

Plaintiff, Local 334, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada (hereinafter, Local 334), having its principal office at 301 East Hanover, Morristown, Morris County, New Jersey, by way of complaint, says that:

FIRST COUNT

1. Plaintiff is a voluntary labor organization chartered by defendant, UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, AFL-CIO (hereinafter, International) for the territory consisting of the greater portion of Morris County, New Jersey, as a combination local union within the meaning of Section 81 of the Constitution of said International, a true copy

of which was annexed to the Complaint as Exhibit "A" heretofore filed.

2. Defendant is an International labor organization consisting of many local unions in New Jersey and elsewhere throughout the United States and Canada.

3. The relationship (rights and duties) between Local 334 and the International is governed by the said Constitution.

4. As a combination local union, Local 334 has a membership composed of journeymen as defined in Section 153 (a) and MT-2 of the said Constitution.

5. The building and construction trades journeymen of Local 334 are adept at all phases of the plumbing and pipefitting craft. Although said journeymen (who participate in a unified apprenticeship program) are required to elect a designation of "plumber" or "pipefitter" upon completion of their apprenticeship, they are all considered "journeymen" by Local 334 and are referred to either plumbing or pipefitting jobs without distinction as to designation.

6. Although said Constitution, Section 81, refers only to a building and construction charter, a metal trades charter, or a combination of the two as the only charters which may be granted by the International, there are local unions affiliated with the International which are commonly known as "straight line" local unions and are either entirely composed of plumbers, with jurisdiction in that phase of the overall jurisdiction of plumbing or are either entirely composed of pipefitters with jurisdiction in that phase of the overall jurisdiction of pipefitting as set forth in the Constitution relating to pipefitting. Such charters pre-existed the original formation of defendant International.

7. Wherever "straight line" locals do exist, there is an overlap in territorial jurisdiction in that two or more

such "straight line" locals encompass the same geographical area.

8. Where a combination local is chartered for a particular territory, it and it alone has the sole jurisdiction in that territory. Thus, insofar as plaintiff is concerned, its territory is exclusive.

9. Plaintiff has serviced the Morris County area since being chartered approximately 70 years ago. At present it is composed of approximately 185 journeymen and apprentices. Plaintiff has contractual relations with the Mechanical Contractors Association and numerous independent piping and plumbing firms doing business on the Morris County area. As a result of continued construction in the jurisdiction of Local 334, its membership has enjoyed excellent employment opportunities and a lower unemployment rate as compared with other sister-locals in New Jersey.

10. Plaintiff operates a hiring hall whereby employers in need of journeymen and apprentices will contact plaintiff which in turn will refer such employees to work.

11. Because it is a combination local and because its membership is adept at all phases of the craft, members of Local 334 are referred out from a unified referral list, regardless of whether the job required a plumber or pipefitter, and regardless of the membership designation of each such member.

12. It is therefore an advantage to be a member of plaintiff rather than a member of a "straight line" local union, which does not enjoy an interchange of work opportunities because of its limited jurisdiction.

13. For a substantial period of time the Constitution of the International has contained language authorizing the General President to order local unions to consolidate, similar to Section 86 of the present constitution, when

"it is apparent that there is a superfluous number of Local Unions in any locality".

14. During this period of time the General President of the International has never deemed the number of local unions in any "locality" of New Jersey to be "superfluous" although in many areas "straight line" locals share the same territory and have on numerous occasions engaged in disputes with one another over the jurisdiction of particular work, requiring the International to resolve such disputes.

15. In or about May, 1977, Local 334, along with the consent of locals 765, 124, and 49, petitioned the General President for permission to consolidate Locals 334, 765, 124, 49 and 523 into one combination local with Local 334 to be the surviving local. Said petition was pursuant to a recommendation by International Representative Coyne that unless the various locals in New Jersey voluntarily consented to consolidations the General President would order consolidations in accordance with an alternative recommendation of said International Representative Coyne pursuant to Section 86. No response to this petition has ever been received.

16. Thereafter, on May 10, 1977, plaintiff, along with other local unions, were ordered to show cause why a plan of consolidation proposed by Representative Coyne should not be issued under Section 86.

17. Accordingly, on May 10, 1977, a hearing on this order to show cause was held under the auspicies of a hearing officer, appointed by the General President at which hearing plaintiff and the other locals affected objected to the plan of consolidation as proposed by Representative Coyne and reiterated their agreed upon petition for consolidation, among other things.

18. At the hearing aforesaid, International Representative Coyne on behalf of the General President testified

that there were a superfluous number of locals in New Jersey, many with small territories and most culminating around the cities of Newark and Jersey City, many confronted with high unemployment and loss of welfare and pension benefits because of a lack of reciprocity.

19. None of the aforesaid observations applied to plaintiff (nor to the locals it sought consolidation with) and, particularly Representative Coyne failed to set forth reasons why plaintiff was considered a "superfluous" local union. In point of fact, Representative Coyne indicated that, in his view, long range growth in the plumbing and pipefitting industry favored plaintiff and other local unions located in the western portion of New Jersey.

20. The Report and Recommendations of the Hearing Officer appointed by the General President (Exhibit "B" annexed to the Complaint heretofore filed) adopted in toto the position of Representative Coyne.

21. As a result, the General President issued his Order of Consolidation (Exhibit "C" annexed to the Complaint heretofore filed), inter alia, breaking up plaintiff local along craft lines and "consolidating" the plumber-designated-members with Local 14 in Jersey City, a "straight line" plumber local, and the pipefitter-members with Local 274, a "straight line" fitter local, also in Jersey City. The Order of Consolidation removed all local unions north of Newark and west of Jersey City and "consolidated" them into two local unions located in Jersey City, New Jersey and awarded the territory of said local unions, but on a divided jurisdictional basis to said Jersey City local unions.

22. The actions of the General President in breaking up the membership of plaintiff, Local 334, as aforesaid, are in excess of the powers granted to the General President under the Constitution aforesaid.

23. The actions of the General Persident, as aforesaid, do not constitute a consolidation of local unions within the meaning of Section 86, and, therefore, said Order of Consolidation; insofar as it applies to plaintiff, is illegal.

24. The effect of the Order of Consolidation is to take away from the membership of plaintiff rights and privileges which they have heretofore enjoyed under the Constitution of the International which action is contrary to the intent and purpose of Section 86 within the framework of the Constitution aforesaid.

25. Plaintiff has attempted to exhaust all available internal remedies under the International Constitution and has been advised by said International that there are no further remedies to exhaust, notwithstanding that plaintiff has in fact appealed the decision of the General President to the General Executive Board and sought a stay from said body pending a hearing on said appeal, which application has gone unanswered.

26. At the present time plantiffs have the exlcusive contractual jurisdiction for all plumbing, pipefitting, metal trades and refrigeration work in Morris County, New Jersey. As such, plaintiff refers out its membership without distinction as to whether they bear a plumber membership card or a pipefitter membership card.

27. The present Order of Consolidation, unless stayed pending this litigation will result in deprivation of work opportunities for each member of plaintiff in that such members will thereafter be required to work under separate local unions which are divided along craft lines and therefore under separate referral lists as either a plumber or a pipefitter with no opportunity to interchange as is presently the case.

28. It is impossible to calculate the financial loss, therefore, to each member of plaintiff, since job referrals

under the Order of Consolidation would be shared with members of the other local unions consolidated, as well as along craft lines. Moreover, each member of plaintiff will have to compete in the territory of Morris County with a large group of journeymen and will lose the advantage of their present positions on the out of work list of plaintiff. Therefore, there will be immediate and irreparable injury to the property rights of the members of plaintiff unless defendant is restrained and enjoined from disbanding Local 334 and enforcing the Order of Consolidation. Plaintiff itself will be required to surrender its assets to be divided between two local unions. Since a great portion of these assets consist of realty, a sale that realty so as to conform with the division of assets will result in irreparable injury to plaintiff itself unless defendant is restrained and enjoined from enforcing the Order of Consolidation.

29. As to each item of relief granted, greater injury will be inflicted upon plaintiff and its membership by the denial of relief than will be inflicted upon defendant by the granting thereof. Plaintiff merely seeks a preservation of the status quo until the issues raised in this Amended Complaint can be resolved at a trial on the merits.

WHEREFORE, Plaintiff demands judgment:

A. Enjoining and restraining defendant, its agents, servants and employees from enforcing the Order of Consolidation pending the resolution of the issues raised in this suit.

B. Directing defendant, its agents, servants and employees to return to plaintiff its charter and seal and to continue, until the further order of this Court, to treat plaintiff as a duly constituted local union of the International and to cease threatening its officers and members with expulsion or penalty for exercising their right to protect their local union and its assets.

C. Setting aside the Order of Consolidation as to Local 334 on the ground that said Order of Consolidation as applied to plaintiff exceeds the powers granted to the General President under Section 86 of the Constitution of the International.

D. Such other and further relief as the Court deems fair and equitable in the cause.

SECOND COUNT

1. Plaintiff repeats the allegations contained in paragraphs 1 through 21 inclusive of the First Count, as if the same were set forth herein in full and made a part hereof.

2. Actions of the General President in directing the breaking up of Local 334 pursuant to Section 86, as more particularly set forth above, constitute an abuse of discretion on the part of said General President in that the consolidations referred to in Section 86 were never designed nor intended to encompass the results directed herein by said Order of Consolidation.

3. The General President, in issuing his Order of Consolidation has failed to consolidate local unions as directed by Section 86, but instead has created local unions with charter jurisdictions which violate Sections 3 and 81 of said Constitution.

4. The General President has abused his discretion within the meaning of Section 86 by failing to specify facts which would support his conclusion that Local 334 is a "superfluous" local union insofar as the Morris County, New Jersey area is concerned or that the elimination of Local 334 would be in the best interests of the United Association, locally or at large.

5. Plaintiff repeats the allegations contained in paragraphs 24 through 28 of the First Count, as if same were set forth herein in full and made a part hereof.

WHEREFORE, Plaintiff demands judgment:

A. Enjoining and restraining defendant, its agents, servants, and employees from enforcing the Order of Consolidation pending the resolution of the issues raised in this suit.

B. Directing defendant, its agents, servants and employees to return to plaintiff its charter and seal and to continue, until the further order of this Court, to treat plaintiff as a duly constituted local union of the International and to cease threatening its officers and members with expulsion or penalty for exercising their right to protect their local union and its assets.

C. Setting aside the Order of Consolidation as to Local 334 on the grounds that said Order of Consolidation as applied to plaintiff constitutes an abuse of the discretion vested in the General President pursuant to Section 86 of the Constitution to consolidate local unions within the framework of the Constitution of the International.

D. Such other and further relief as the Court deems fair and equitable in the cause.

THIRD COUNT

1. Plaintiff repeats the allegations contained in paragraphs 1 through 21 inclusive of the First Count, as if the same were set forth herein in full and made a part hereof.

2. In determining that Local 334 was "superfluous" and that its consolidation with other local unions would be "for the best interests of the United Association, locally or at large, the General President was required to specify in detail the reasons supporting these conclusions as to Local 334 so as to permit a determination on review as to whether his actions constituted a reasonable exercise of

the discretion vested in him under Section 86 of the Constitution of the International.

3. The General President failed to set forth his reasons why he concluded the existence of Local 334 was "superfluous" or that its consolidation with another local would be "for the best interests of the United Association, locally or at large" within the meaning and intent of Section 86.

4. Plaintiffs repeat the allegations contained in paragraphs 24 through 28 of the First Count, as if the same were set forth herein in full and made a part hereof.

WHEREFORE, Plaintiff demands judgment:

A. Enjoining and restraining defendant, its agents, servants and employees from enforcing the Order of Consolidation pending the resolution of the issues raised in this suit.

B. Directing defendant, its agents, servants and employees to return to plaintiff its charter and seal and to continue, until the further order of this Court, to treat plaintiff as a duly constituted local union of the International and to cease threatening its officers and members with expulsion or penalty for exercising their right to protect their local union and its assets.

C. Setting aside the Order of Consolidation as to local 334 on the ground that defendant, by its General President, has failed to spell out the reasons behind his decision as more particularly contained in the Report and Recommendations of Hearing Officer Coyne and the Order of Consolidation and directing that such reasons be so specified and the General President directed to reconsider his proposal to consolidate Local 334 and a new decision thereupon directed.

D. Such other and further relief as the Court deems fair and equitable in the cause.

FOURTH COUNT

1. Plaintiff repeats the allegations contained in paragraphs 1 through 24, inclusive and 26 through 28 inclusive of the First Count, as if the same were set forth herein in full and made a part hereof.

2. Plaintiff was advised at the hearing held May 10, 1977 by International Representative Coyne in connection with the order to show cause issued by the General President, as aforesaid, in connection with the right of appeal from any decision of consolidation by the General President, that each affected local union had a right of appeal.

3. Accordingly, plaintiff has appealed the decision of the General President to the General Executive Board pursuant to Sections 218(a), 219(a) and (b), and 222 of the Constitution aforesaid, a copy of said appeal and request for a stay pending appeal being annexed to the Complaint heretofore filed as Exhibit "D", but has received no reply thereto.

4. Plaintiff has a right to have its appeal heard and considered by the General Executive Board pursuant to said Constitution aforesaid and that failure to process said appeal constitutes a violation of said Constitution and the rights of plaintiff thereunder.

WHEREFORE, plaintiff demands judgment as follows:

A. Enjoining and restraining defendant, its agents, servants and employees from enforcing the Order of Consolidation pending the resolution of the issues raised in this suit.

B. Directing defendant, its agents, servants and employees to return to plaintiffs its charter and seal and to continue, until the further order of this Court, to treat

plaintiff as a duly constituted local union of the International and to cease threatening its officers and members with expulsion or penalty for exercising their right to protect their local union and its assets.

C. Directing the General Executive Board to review and consider the appeal filed by Local 334, giving said Local a reasonable opportunity to present and argue its case, and, thereafter, to fairly and impartially review same and render its decision in accordance with the Constitution of the International aforesaid.

D. Such other and further relief as the Court deems fair and equitable in the cause.

CRANER & NELSON
Attorneys for Plaintiff

By: /s/ John A. Craner
JOHN A. CRANER
For the Firm

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Civil Action No.

UNITED ASSOCIATION, LOCAL No. 334,
Plaintiff,

vs.

UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, AFL-CIO,
Defendant.

ORDER TO SHOW CAUSE AND TEMPORARY RESTRAINING ORDER

This matter being opened to the Court by Craner and Nelson, Esqs., attorneys for plaintiff, LOCAL NO. 334, U. A., etc., and it appearing to the Court that plaintiff filed a Complaint in the Superior Court of New Jersey, Chancery Division, Morris County, wherein it sought certain injunctive relief, and therafter filed an Amended Complaint also seeking certain injunctive relief, among other things, along with supporting Affidavits, and it further appearing that the within action has been removed by defendant to this Court as more particularly set forth in a certain Petition of defendant for removal heretofore filed with this Court, and whereas plaintiff seeks a Temporary Restraining Order preliminary to hearing upon Motion for a preliminary injunction, on grounds that immediate and irreparable injury, loss or damage will result to plaintiff before notice can be served and a hearing had thereon, in that plaintiff has been directed to cease operations as a duly chartered local of defendant, to divide up its membership and property immediately, and in connection therewith, contractors having collective bargaining agreements with plaintiff are being instructed not to do business with plaintiff, not to

seek employees from plaintiff and to turn over all fringe benefit contributions owed to plaintiff to other locals of defendant;

It is, therefore, on this 16th day of August, 1977, ORDERED that defendant show cause before the Hon. Vincent Biunno on Wednesday the 7th day of September, 1977 at 10 o'clock in the forenoon or as soon thereafter as counsel may be heard as to why a preliminary injunction should not issue enjoining and restraining defendant, its officers, agents, employees and attorneys, pending trial and ultimate disposition of this action from enforcing the Order of Consolidation annexed to the Complaint as to plaintiff and from taking any steps toward interfering with plaintiff's contractual relations with employers or from in any way treating plaintiff other than as a duly constituted local of defendant as was the case prior to said Order of Consolidation, and for such other, further and different relief as may be appropriate.

IT IS FURTHER ORDERED that defendant, its officers, agents, employees and attorneys, and all persons acting by, through or under them be, and they are hereby restrained until September 7th, 1977 from in any way enforcing the Order of Consolidation, from interfering with the contractual relations of plaintiff with employers, and from in any way treating plaintiff as other than a duly constituted local of defendant as was the case prior to the Order of Consolidation.

This temporary restraint is on condition that a bond of cash be filed by plaintiff herein in the sum of $500.00 forthwith within —— days from the date hereof in accordance with Rule 65(c).

/s/ Lawrence A. Whipple
LAWRENCE A. WHIPPLE
C.J.
U.S.D.C.

It is further ordered that the restraints contained in this order shall expire on September 7th, 1977 unless on before such date the time be extended as provided in Rule 15 and that defendant have leave to move for a dissolution or modification of the restraints hereby imposed on —— day's notice by attorney for plaintiff.

It is further ordered that true but uncertified copies of this order and the affidavits filed herewith be served upon the attorneys for defendant within 2 days from the date here.

/s/ Lawrence A. Whipple
LAWRENCE A. WHIPPLE
C.J.
U.S.D.C.

[AFFIDAVIT OF MARTIN J. WARD DATED SEPTEMBER 9, 1977 WITHOUT ATTACHMENTS]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Civil Action No.

UNITED ASSOCIATION, LOCAL NO. 334,
Plaintiff,

vs.

UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, AFL-CIO,
Defendant.

AFFIDAVIT

WASHINGTON, DISTRICT OF COLUMBIA) ss.:

MARTIN J. WARD, of full age being duly sworn upon his oath according to law deposes and says:

1. I am the duly elected General President of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada (hereinafter referred to as the "United Association"). I have served in that capacity since June 1, 1971. I first became an officer of the United Association on July 1, 1958, when I was appointed to the office of Assistant General-Secretary-Treasurer. Prior to becoming an officer of the United Association, I was Business Manager of Local 597 of Chicago, Illinois. I first joined the United Association in 1937 as an apprentice steamfitter member of Local 597. I completed my apprenticeship in 1942 and until my election to a full office in Local 597, I worked at the trade of journeyman steamfitter.

2. The United Association is a labor organization with approximately 335,000 members in approximately 565 local unions. The work jurisdiction of the United Association is set forth on pages 136-141 of the current Constitution (attached hereto as Exhibit A). It embraces pipe of every form and description and wherever located. The work jurisdiction of the United Association includes the work of several recognized separate trades. They are the trades of plumber, steamfitter-pipefitter hereinafter referred to as pipefittter,[1] lead burner, and sprinkler fitter. Within these trades there are also recognized special skills. For example, instrument fitting—the calibration and adjustments on piping systems and controls, pipe welding, the installation and servicing of refrigeration equipment, are all special skills within the pipefitter trade. There are pipefitter members who exclusively perform the work of their special skills. The line of demarcation between the trades is determined by the purpose of the piping system. Thus, the work of the plumbing trade includes domestic water and sewer pipe—work covered by the plumbing code. The pipefitting trade includes heating, cooling and industrial pipe. The lead burning trade encompasses all lead burning work in the plumbing and pipefitting industry and the work for sprinkler fitter trade is pipe for automatic fire extinguisher systems. The United Association has historically chartered building and construction local unions with a trade jurisdiction limited to a single trade such as the plumber trade or the pipefitter trade. The United Association has also historically chartered building and con-

[1] At the turn of the century this trade was generally called the steamfitter trade. The term pipefitter is a development that started in the late 1930's to reflect that the steamfitter trade encompasses something more than heating and cooling. It also includes process piping in industrial plants. The term steamfitter and/or steamfitter-pipefitter have identical meanings insofar as they are used in the United Association.

struction local unions composed of dual trades such as the plumber trade or the pipefittter trade. There are two local unions that have charters for the trades of pipefitter and sprinklerfitter, namely Local 120 of Cleveland, Ohio, and Local 638 of New York City. All of the lead burner locals are single trade locals, and there are 19 sprinklerfitter single trade local unions. The allegations in the complaint that the charters of local unions with a single trade jurisdiction pre-date the original formation of the Defendant International Union and the allegation in William Wibbelt's affidavit that no charters for a single trade have been issued since the merger in 1912 are just not true. The United Association was issued a charter by the American Federation of Labor on October 11, 1889. Each of the single trade charters issued by the United Association was issued subsequent to October 11, 1889. The International Association of Steam, Hot Water and Power Pipefitters was issued a conditional charter by the American Federation of Labor in 1901. Jurisdictional disputes arose between the International Association and the United Association and, at its 1912 convention in Rochester, New York, the American Federation of Labor ordered the International Association to merge with the United Association. The International Association's membership was exclusively pipefitters, whereas the membership of the United Association include all pipe trades. For example, in Chicago the United Association had chartered Plumbers Local 520. The International Association had chartered Pipefitters Local 2. After the 1912 convention, International Association Local 2 and United Association Local 520 merged and became Local 597, my home local union. Since the merger in 1912, the United Association has continued, right up to the present day, to issue building and construction charters to local unions for a single trade. Nineteen charters for building and construction local unions, composed solely of sprinkler fitter journey-

men and apprentices, have all been issued subsequent to 1912. Other examples of single trade plumber or pipefitter building and construction local unions chartered since 1912 are the following:

LOCAL UNION		DATE OF CHARTER	TRADE
606	Isthmus of Panama	2-14-14	Plumber
651	Charleston, W.Va.	8-1-14	Plumber
449	Pittsburgh, Pa.	5-10-13	Pipefitter
342	Oakland, Calif.	5-1-14	Pipefitter
464	Omaha, Nebraska	4-3-15	Pipefitter
512	Nashville, Tenn.	11-18-15	Pipefitter
457	Nassau Co., L.I., N.Y.	6-17-16	Plumber
775	Suffolk Co., L.I., N.Y.	4-26-19	Plumber
818	Syracuse, New York	7-10-20	Pipefitter
765	Passaic, N. J.	4-15-22	Pipefitter
690	Philadelphia, Pa.	3-25-31	Plumber
250	Los Angeles, Calif.	10-1-38	Pipefitter
195	Beaumont, Texas	4-21-41	Pipefitter
625	Charleston, W. Va.	5-22-43	Pipefitter
80	State of Delaware	9-24-44	Pipefitter
211	Houston, Texas	1-1-49	Pipefitter
725	Miami, Florida	6-22-50	Pipefitter
799	Newcastle & Chatham, N.B.	11-23-65	Pipefitter

Not only has the United Association continued to issue building and construction charters for single trade locals since 1912, but some of the United Association locals that were dual trade locals prior to the merger became a single trade local after the merger by the issuance of a separate charter for members of one of the trades. Thus, Local 16 of Omaha, Nebraska, was a dual trade plumber and pipefitter United Association local prior to the merger. In 1914, the pipefitter members of Local 16 were issued a charter as Local 464—a single trade pipefittter local. Local 17 of Memphis, Tennessee, is another example. In 1914, a single trade separate charter was issued for the pipefitter members of Local 17. More

recent examples are Local 211 of Houston, Texas, and Local 250 of Southern California. They are single trade pipefitter locals that were split off from dual trade locals. Local 211 was chartered in 1949 and Local 250 in 1938.

3. Sections 3 and 81 of the Constitution have never been interpreted to prohibit the issuance of a charter for a building and construction local union with jurisdiction over a single trade. Section 82 defines a building and construction local as a local union composed of journeymen and apprentices qualified to work under the jurisdiction of the Building and Construction Trades Department of the AFL-CIO. The jurisdiction of the Department, as the name indicates, is the building and construction industry. When a building and construction charter is issued with jurisdiction over journeymen and apprentices of one of the recognized trades in the plumbing and pipefitting industry, the definition in Section 82 has always been considered to have been complied with. In the Complaint and affidavits filed in this case, the theory is advanced that Sections 3 and 81 of the Construction require that each building and construction local union have jurisdiction over all journeymen and apprentices in the plumbing and pipefitting industry in the geographical area encompassed by the local's charter and, thus, the consolidation order is unconstitutional because it separates membership along trade lines. The constitutional provisions in question have never been so interpreted. Today, there is not one local union that has a charter which grants full jurisdiction over plumbing and pipefitting work in the construction industry. Separate charters have been granted for lead burning work, sprinkler fitting work, pipeline transportation work, etc., to the exclusion of other building and construction local unions. For example, in northern New Jersey, Sprinkler Fitters Local 696 has exclusive jurisdiction over sprinkler work, to the exclusion of other building and construction local unions.

4. Attached as Exhibit B is a list, as of July 1, 1976, of the local unions chartered by the United Association. This list of the classifications of local unions indicates the diversity that the United Association has exercised in the issuance of charters. As of July 1, 1976, there were 43 local unions with jurisdiction over pipefitters, 55 local unions with jurisdiction over plumbers, 387 with jurisdiction over the dual trades of plumber and pipefitter, 7 local unions with jurisdiction over lead burners and 19 with jurisdiction over sprinkler fitters. The single trade plumber and pipefitter local unions are generally located in the major cities throughout the United States and they have the largest membership of United Association local unions. For example, the single trade Steamfitter Local 597 of Chicago and the single trade Plumbers Local 130 of Chicago have in excess of 15,000 members, more than the membership in the entire State of New Jersey with its 27 local unions prior to the Orders of Consolidation. The dual trade local unions, when initially chartered, were in outlying areas and more often than not these were areas where there were not sufficient members in each of the trades to support a single trade local union.

5. The term "combination local" is used in the plaintiff's complaint to describe a local union that has jurisdiction over both the plumber trade and the pipefitter trade. Technically, under the Constitution, this is not the proper use of the term. Section 83 of the Constitution defines a combination local union as a local union that has been given building construction jurisdiction, either as a single or dual trade, and also has been given metal trades jurisdiction. Sections 3 and 81 provide that the United Association shall charter three types of local unions: a building and construction local union, a metal trades local union, or a combination local union, that is a local union with building trades jurisdiction and metal

trades jurisdiction. The jurisdiction of the metal trades is defined in Metal Trades Sections 1 and 5 (pages 120-122 of the Constitution, Exhibit A) as work related to the plumbing and pipefitting industry. Examples of what the United Association considers to be within the metal trades jurisdiction are the shipbuilding industry, the gas utility industry, maintenance work in plants and production work in fabrication shops. We have chartered 11 marine metal trades local unions, 7 gas worker metal trades locals and several metal trades locals with jurisdiction over maintenance in a particular shop or territory. Most local unions with jurisdiction over a single trade or two trades in the building and construction industry have also been granted metal trades jurisdiction. This is the reason why, as the list of classifications (Exhibit B) reflects, the vast majority of local unions are combination local unions, i.e., they have building and construction jurisdiction and metal trades jurisdiction.

6. Since the time the United Association was first established, there have been consolidations of local unions. I have reviewed our records back as far as 1961 and I find that, since 1961, there have been over 175 mergers, that is consolidations of local unions. Attached as Exhibit C is a list of the consolidations during the following periods:

July 1, 1961-June 30, 1966	26
July 1, 1966-June 30, 1971	68
July 1, 1971-June 30, 1976	85

Of the 26 consolidations during the 1961-66 period, three of the consolidations involved consolidating a local with jurisdiction over two trades by consolidating the plumber members of that local with a single trade plumber local union and the pipefitter members of that local with a single trade pipefitter local union. Of the 68 consolidations during the 1966-71 period, six involved consolidations of the plumber members of a dual trade local with

a single trade plumbers local and the pipefitter members of the dual trade local with a single trade pipefitters local. A seventh consolidation involved a consolidation of the sprinkler fitter members of Road Sprinkler Fitters Local of Canada with nine Canadian building and construction local unions. Of the 85 mergers during the 1971-76 period, seven involved a consolidation of the plumber members of a dual trade local with a single trade plumber local and the pipefitter members of the same dual trade local with a single trade pipefitters local. A red asterisk has been place on Exhibit C to indicate those consolidations that involved a consolidation of the plumber and steamfitter members of a dual trade local into single trade local unions along those lines.

7. That consolidations were taking place which resulted in splitting the membership of a local union along trade lines was a matter of common knowledge. Exhibit C has been extracted from the General Officers' Reports to the 1966, 1971 and 1976 Conventions. At each of these Conventions, a General Officers' Report in booklet form was given to each delegate as he registered. One of the Convention Committees was the Committee on the General Officers' Report. At each of these Conventions, 1966, 1971 and 1976, the Committee on the Officers' Report submitted a report that was unanimously adopted, commending the General Officers on their conduct of the affairs of the United Association during the previous five years. As stated above, the General Officers' Report listed the consolidations that had taken place, including those where a dual trade local had been consolidated by the plumber members being consolidated with a single trade plumbers local and the pipefitter members being consolidated with a single trade pipefitters local.

8. As the statistics indicate, consolidations of United Association local unions are on the increase over the five-year period ending July 1, 1976. There is a reason

for the increase and that reason is that the General Officers of the United Association have concluded that the United Association has too many local unions and that it is in the best interest of the membership of the United Association, both locally and as a whole, that there be consolidations. One of the major weaknesses of unionized segments of the construction industry has been the fragmented pattern of collective bargaining. Where you have a number of local unions in a geographical area, each with the right of bargaining its own collective bargaining agreement, the industry has experienced strikes and ever escalating wage settlements. To illustrate, Local X whose collective bargaining agreement expires on May 1 settled for a $1.00 per hour economic settlement. Local Y, who is in the same general geographic area as Local X, has an agreement that expires on July 1. Local Y seeks to improve on Local X's settlement and, after a strike of several weeks or a threatened strike, Local Y settles for a $1.50 per hour settlement. During the past ten years, this pattern has repeated itself again and again. It has repeated itself to such an extent that it has affected the viability of the union contractor to compete with his non-union counterpart. Consolidation of local unions is the only realistic method within the structure of the United Association for developing long-term wider patterns of collective bargaining for United Association that will thereby provide stability for the industry.

9. Consolidations also allow for greater freedom of movement for contractors and the United Association members they employ. As it is now, a contractor can be headquartered in one local union's jurisdiction and, although he has a regular work force, when he goes 15 or 20 miles in either direction, he is into another local union's jurisdiction. He cannot utilize his regular work force in that other local. He is required to hire locally. Consolidations of local unions provide the freedom of

movement which is of benefit to both the contractor and his regular United Association employees.

10. Consolidations of local unions also serve to correct another serious weakness in the plumbing and pipefitting industry and that is the problem of reciprocity described in International Representative Coyne's affidavit filed in this case. Because of the cyclical nature of the construction industry and large industrial construction projects, many members of the United Association travel to find work in the jurisdiction of other local unions. Most of these traveling members never work long enough in the other local's jurisdiction to meet the vesting requirements of the local's pension plan. Unless there is reciprocity between fringe benefit funds, the traveler never obtains the benefit of the contributions that are paid in on his behalf when traveling. The United Association has attempted to correct this problem, in part by establishing in 1966 the Plumbers and Pipefitters National Pension Plan. As of August, 1976, 160 United Association local unions representing over 60,000 members in all geographical areas were participating in the National Plan. The National Plan has reciprocal agreements with any plan of a United Association local union that is willing to enter into a reciprocal agreement. At the last three Conventions of the United Association—1966, 1971 and 1976—the delegates have adopted strong resolutions supporting reciprocity and its concept that money follows the man. Attached as Exhibit D is an excerpt from a 1976 Convention proceeding setting forth the resolutions and report adopted by the Convention regarding reciprocity. Consolidations generally result in a merger of fringe benefits and the adoption of reciprocal arrangements.

11. Consolidations also serve the important purpose of increasing work opportunities for the members. There are United Association local unions whose membership

has not grown in years and the local relies on travelers to fill its manpower needs. A consolidation of such a local with a local that has unemployment can be of benefit to the membership of both local unions. It results in a local, after the consolidation, that can meet manpower requirements with its own membership. Except for the very large industrial projects, such as a power plant, a local union should have a size membership that is at least equal to the normal work force requirements in its area. A local should not be relying on travelers to man its normal work. Local 334 is a local whose membership has not grown and who relies on travelers.

12. Local unions that have only one full time officer cannot, in the judgment of the General Officers of the United Association, do an adequate job of policing their collective bargaining agreements or organizing the non-union contractor that are growing at an absolutely alarming rate. With the paper work and recordkeeping that is involved in the operation of any local union and the meetings regarding contractor and member problems and the fringe benefit funds, a single full time officer of a local does not have time to be in the field organizing the non-union contractor. Consolidation of small local unions into larger local unions increases the opportunity for the consolidated local unions to have more representatives in the field organizing.

13. With regard to the Order of Consolidation in the present case, Hearing Officer Coyne, in his report, set forth the reasons why he concluded that the consolidations proposed by International Representative Coyne were in the best interest of the membership. I adopted that report in its entirety. In adopting the report, I considered and rejected the proposals presented by Locals 49, 124, 334 and 765. I also considered and rejected the proposal of Local 523. As Hearing Officer Coyne pointed out, these proposed consolidations did not embrace a wide

enough geographical area. Further, they did nothing to increase work opportunities for those locals where there is unemployment. In addition, Local 523's proposal involved two locals in Area II International Representative Coyne did not simply recommend consolidations in the northern part of the State of New Jersey. He recommended four plans that dealt with the entire State of New Jersey. After receiving his plans, I appointed hearing officers to consider International Representative Coyne's plan for each of the four areas. The Order of Consolidation in the instant case involved Area I. There were also orders of consolidation in the other three areas.

14. William Wibbelt, in his affidavit, at one point suggests that the Order of Consolidation in the instant case was politically motivated. I vehemently deny this allegation. Since I became General President in 1971, I have traveled the length and breadth of this country speaking at State Pipe Trades Association meetings, at conventions, at conferences for United Association local union officers and at meetings and conventions of contractors. In my speeches, I have explained over and over the reasons why there had to be consolidations of local unions within the United Association and we have been moving ahead in this direction. For example, in the adjoining States of New York and Pennsylvania, since July 1 of 1966 there are 26 fewer local unions in the State of New York and 39 fewer local unions in Pennsylvania, all as the result of consolidations. The Order of Consolidation in this case and the other three orders of consolidation for New Jersey have absolutely nothing to do with politics. The sole motive for the orders of consolidation was what was in the best interest of the United Association. Local unions and their memberships have resented actions by the General Officers, forcing them to consolidate. Initially, this has been true in most instances. However, once the consolidation takes place, it has been my experience that, after a year or two elapses, the vast ma-

jority of the membership of the consolidated local union recognizes that the consolidation was in their best interest. Mr. Wibbelt also suggests that the Area I locals should have been permitted to consolidate in the same manner as Area III was consolidated. There are important differences in the areas. In Area III, each of the local unions was a dual trade local. Further, all of the local unions in the area agreed to voluntarily consolidate. In Area I, the locals are not all dual trade locals. In point of fact, the single trade local unions in Area I have the predominate membership and all the locals could not agree on a method to consolidate the locals. The single trade locals were vehemently opposed to dual trade locals and the dual trade locals were of the same view on a consolidation into a single trade local for plumbers and a single trade local for pipefitters.

15. In the complaint and the affidavit of William Wibbelt, the argument is advanced that there are only journeymen and apprentice members of the United Association. Reliance is placed upon Section 153 and Section MT-2 which set forth the eligibility requirements for journeyman membership. These eligibility requirements apply for each of the trades that constitute the membership of the United Association. Every member of the United Association has a trade classification, and there is no member who is classified as simply a journeyman or an apprentice. Members are classified by trade. Each member of Local 334 has a trade classification and the records of the United Association reflect a trade classification for every member of Local 334. Attached as Exhibit E is a copy of the standard application form that is used by all local unions, which requires applicants to apply for membership by trade.

16. The statement is made in the William Wibbelt affidavit that a dual trade local can better protect the trade jurisdiction of the United Association than a single

trade local union. I disagree with this assertion. The United Association has both dual and single trade locals that are doing excellent jobs in combating non-union conditions. We have locals that are doing a poor job. In a large measure, the success of a dual or a single trade local depends on the resources of the local and the effectiveness of the leadership. The Order of Consolidation, in my judgment, results in two single trade local unions that will have greater resources than the present set up and will have an experienced leadership. They should be able to do a more effective job in combating the non-union element that is growing in northern New Jersey. The new single trade local unions will have a much greater territorial jurisdiction and, with the other consolidations taking place in the State, there should be greater stability in collective bargaining throughout the State of New Jersey. Prior to the consolidation, the average geographic territory of the New Jersey local union was 360 square miles. This was the smallest average size per local union of any state in the United States. The average area of United Association local unions in neighboring states include 991 average square miles in Delaware, 1360 average square miles in New York and 3200 average square miles in Pennsylvania. It is my understanding that the collective bargaining agreements of Locals 274 and 14 terminate on October 31, 1977. Except for Locals 49 and 523, the agreements of the other local unions, namely Locals 84, 124, 326, 334 and 765, expire on October 31, 1977. In view of these circumstances, the consolidated locals should be able to negotiate an agreement covering most of their territorial area in a short period of time.

17. The single trade locals have other advantages for the membership. Generally, single trade plumber local unions have controlled their work better than small dual trade local unions. It is in the dual trade locals where the small jobbing work and housing has gone almost

totally non-union. It is my judgment that a single trade plumbers l al in northern New Jersey has the best chance of recapturing the work of the plumber. The single trade pipefitters local, on the other hand, will be able to more effectively control industrial work. It is the industrial work where the United Association still has control but serious inroads are being made by non-union contractors in this field. There is no question in my mind that a single trade local can more effectively control industrial work than a dual trade local. I constantly receive complaints from contracotrs that men who are unqualified for industrial pipe work are being referred to work on industrial projects. A single trade local of pipefitters should be able to insure that contractors will have experienced and qualified pipefitters for that class of work and thereby be able to retain United Association control in the industrial field.

18. William Wibbelt, in his affidavit, contends that Section 86 was only intended to apply where there are two single trade locals in the same territorial jurisdiction. I specifically deny this contention. Section 86 has never been interpreted in such a limited manner. In fact, the majority of the over 175 consolidations that have taken place since 1961 were consolidations of local unions that had separate and distinct territorial jurisdictions. Generally, they were neighboring unions who were consolidated together to leave a single local union with a much greater territorial jurisdiction.

19. The William Wibbelt affidavit characterizes the consolidation as placing the consolidated members in Jersey City Locals 14 and 274. Such a characterization is not accurate. Locals 14 and 274 are not the same two locals that existed prior to the Order of Consolidation. As the result of the consolidation Locals 274 and 14 have a much greater territorial jurisdiction and a much larger membership. It is this consolidated membership that will

adopt new by-laws for the locals and will determine where meetings will be held and where the local will be headquartered. The membership may decide that the local will be headquartered at some other location than Jersey City. In Area IV of the State where Local 124 of Atlantic City was consolidated with Local 322 of Camden, I have been advised that the consolidated local union has decided to hold monthly membership meetings at a place half way between Atlantic City and Camden. The consolidations in the instant case may result in some inconvenience in traveling further distances to meetings but any travel disadvantage is far outweighed by the advantages flowing from the consolidation.

20. The complaint and the affidavits allege that there are advantages to belonging to a local where the membership does both pipefitting and plumbing. I don't perceive such an advantage. As the result of the consolidation, plumbers will be performing plumbing work and pipefitters pipefitting work. You will not have both trades competing for the same work. The only disadvantage I perceive is for the individual who has performed the work of the other trade for many years and is experienced and desirous of continuing to work at the other trade. For example, a plumber who has worked at industrial work for many years. I have attempted to take care of that problem by providing in the Order of Consolidation that members will be afforded the opportunity of applying for a change of trade classification. Such trade classifications will be approved if the applicant has the requisite qualifications. With regard to the matter of work opportunity, the Order of Consolidation results in two single trade local unions that, in my opinion, should be strong organizations that can recapture work which is now being performed non-union, thereby creating greater work opportunities for the membership of each of the two single trade locals.

21. A comment should be made regarding Local 334's utilization of a single out of work list on which men are listed in the order in which they are registered. As I understand it, Local 334 asserts that they refer in the order in which men are registered, irrespective of whether the contractor wants a plumber or pipefitter or a man with special skills, such as pipe welding or refrigeration fitting. The use of a single out of work list for referral is not typical for dual trade United Association local unions. Most dual trade local unions use multiple lists that reflect the separate trades and the special skills among each of the trades. In the model hiring provisions that the General Office prepared for local unions several years and, the hiring provisions provided for multiple lists. To refer men in rotation without consideration of their trade and special skills is an extremely uneconomical practice that can only hurt the union contractor and increase his costs of doing business. If a union contractor has need for a plumber for jobbing work, it makes little economic sense to refer him a pipefitter. My experience has been that it will take a few days but the contractor will find that he is paying for either no work or poor workmanship. He will then lay the man off and obtain a replacement. The allegations in the Complaint and the affidavits that the membership of the United Association and, more particularly, the membership of Local 334 are universal journeymen is, for the reasons stated in the affidavit of Training Director George H. Bliss, just not true.

22. In the complaint, the allegation is made that Local 334 has been denied an appeal to the General Executive Board. Under the Constitution, there is no right of appeal. Section 86 requires the General President to obtain the approval of the General Executive Board before an order of consolidation is issued. The General Executive Board did consider and approve the Order of Consolida-

tion that is the subject matter of this suit at a meeting held in Lafayette, Indiana, on August 3-10, 1977. Sections 218 and 219 of the Constitution have never been interpreted or construed to sanction an appeal to the General Executive Board on a matter that has already been considered and decided by the Board.

23. Under date of August 4, 1977, Proposition GP-7, attached as Exhibit F, together with enclosures was mailed to each General Executive Board member. On August 8-10, 1977, the General Executive Board held a meeting in Lafayette, Indiana. Shortly before adjournment of the meeting on August 9, the Board was briefly advised of Proposition GP-7. Because some of the Board members were in transit to Lafayette and had not received my letter of August 4, 1977, with enclosures, each Board member was given a copy of the transcript of the hearing for Area I, a copy of Hearing Officer Coyne's report and a copy of my proposed Order of Consolidation. The Board was to study the material before the next day's meeting. The Board reconvened on August 10, 1977. Proposition GP-7 was taken up as the first order of business and, after a thorough discussion of this proposition, it was moved, seconded and carried to approve proposition GP-7. All Board members were present and voted except William Gobile who was absent due to illness.

24. Allegations have been made to the effect that there will be hostility and jurisdictional disputes between a single trade plumbers local and a single trade pipefitters local. Twenty or thirty years ago, that would probably have been an accurate statement. Time has a way of healing and today a spirit of cooperation does exist between the single trade plumber and the single trade pipefitter local unions. In recent years, very few jurisdiction-

al disputes have arisen between single trade plumber and single trade pipefitter local unions.

/s/ MARTIN J. WARD
General President

Subscribed and sworn before me this 9th day of September, 1977.

/s/ GENE M. LEAKEY
Notary Public, D.C.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Civil Action No. 77-1769

UNITED ASSOCIATION, LOCAL NO. 334,
Plaintiff,

vs.

UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, AFL-CIO,
Defendant.

NOTICE OF MOTION

and

MOTION TO REMAND

TO: McCARTER & ENGLISH, ESQS.
550 Broad Street
Newark, New Jersey 07102
Attorneys for Defendant

SIRS:

PLEASE TAKE NOTICE that on Friday, September 16, 1977, at 9:00 o'clock in the forenoon, or as soon thereafter as counsel may be heard, plaintiffs will move the Court, at the United States Post Office and Court House Building, Federal Square, in the City of Newark, New Jersey, for an Order remanding the above-entitled cause from the United States District Court for the District of New Jersey to the Superior Court of New Jersey, Chancery Division—Morris County, from which it was removed on or about August 25, 1977 pursuant to Petition of UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING

AND PIPEFITTING INDUSTRY, the defendant in this action;

PLEASE TAKE FURTHER NOTICE that the plaintiffs will advance the following grounds in support of the within Motion:

(A) That this action was removed improvidently and without jurisdiction, as the claims and rights of plaintiffs in said action against said defendants originate in the law of the State of New Jersey and do not arise under the Constitution, treaties or laws of the United States, to wit, as asserted by the removing party, Section 301 of the Labor-Management Relations Act, as amended (— U.S.C. — —) within the purview of Title 28, U.S.C. § 1441(b) in that no federal question is involved in said action, and that accordingly removal of said action without regard to the citizenship or residence of the parties is not warranted under the provisions of Title 28 U.S.C. § 1441.

(B) That this is not a proper case for resolution by the Federal courts under the aforesaid Section 301 of the Labor-Management Relations Act and removal would result in needless intervention by the federal courts in the internal affairs of unions because this dispute is not resolvable on the Constitution, a written instrument of definite construction and tenor, in that the defendants do not wish to rely on the plain meaning of said Constitution but instead urge intra-union custom and practice in support of the Order of Consolidation which is the subject of the instant Complaint.

(C) That this is not a proper case for resolution by the Federal courts under the aforesaid Section 301 of the Labor-Management Relations Act and removal would result in needless intervention by the federal courts in the internal affairs of unions because there is no allegation that this intra-union dispute has "traumatic indus-

trial and economic repurcussions" or even that it has an impact on the collective bargaining relationship.

PLEASE TAKE FURTHER NOTICE that in support of this Motion, plaintiffs will rely upon the Memorandum of Law, and upon all other papers heretofore filed and served with regard to this action.

PLEASE TAKE FURTHER NOTICE that at the same time and place, plaintiffs will move that costs be taxed in accordance with law.

Respectfully submitted,

CRANER & NELSON

By: /s/ John A. Craner
JOHN A. CRANER

DATED: September 16, 1977

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Civil Action No. 77-1769

UNITED ASSOCIATION, LOCAL NO. 334,
Plaintiff,

vs.

UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, AFL-CIO,
Defendant.

ANSWER—Filed October 4, 1977

Defendant, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO, having a principal place of business at 901 Massachusetts Avenue, Northwest, Washington, District of Columbia, 20001, by way of answer to the Complaint of Plaintiff, Local No. 334, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, respectfully says:

AS TO THE FIRST COUNT

1. The allegations of paragraphs 1, 2, 3 and 4 are admitted.

2. Defendant does not have sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in paragraph 5, and, therefore, leaves the Plaintiff to its proof.

3. Defendant admits the allegations of paragraph 6 except that it denies that such charters as have been granted to local unions composed entirely of plumbers or entirely of pipefitters pre-existed the original formation

of the Defendant International. Defendant states that subsequent to the formation of the Defendant International, charters have been issued to local unions comprised solely of plumbers or solely of pipefitters.

4. The allegations of paragraph 7 are admitted.

5. The allegations of paragraph 8 are denied.

6. Upon information and belief Defendant denies that Plaintiff has serviced the Morris County area since being chartered approximately 70 years ago. It is further denied that the membership of Plaintiff is comprised of approximately 185 Journeymen and Apprentices. With respect to the remaining allegations of paragraph 9, Defentant does not have sufficient knowledge or information to form a belief as to their truth or falsity, and, therefore, leaves the Plaintiff to its proof.

7. The allegations of paragraph 10 are admitted.

8. Defendant does not have sufficient knowledge or information to form a belief as to the truth or falsity of the allegations of paragraph 11, and, therefore, leaves the Plaintiff to its proof. Defendant specifically states that the reference to a "combination local" contained in paragraph 11 is an improper reference in that Plaintiff is not referring to itself as a "combination local" as that term is utilized in Section 81 of the Constitution. Additionally, if Plaintiff refers both journeymen plumbers and pipefitters to jobs from a single hiring list, regardless of job requirements, Plaintiff is not acting in accordance with established procedures for job referrals or in accordance with the Constitution.

9. The allegations of paragraph 12 are denied.

10. The allegations of paragraph 13 are admitted.

12. It is admitted that in, or about, May, 1977, Local

11. The allegations of paragraph 14 are denied.
334, along with the consent of Locals 765, 124 and 49,

petitioned the General President for permission to consolidate Locals 334, 765, 124, 49 and 523 into one combination Local with Local 334 to be the surviving Local. The remaining allegations of paragraph 15 are denied.

13. The allegations of paragraph 16 are admitted.

14. With respect to the allegations of paragraph 17, it is admitted that on May 10, 1977 a hearing on the Order to Show Cause was held under the auspices of a Hearing Officer appointed by the General President. It is further admitted that Plaintiff and certain specific locals affected by the plan of consolidation objected to that plan. It is denied that all other locals objected to the plan of consolidation. Defendant states that a majority of the unions involved in the plan of consolidation approved of the same and supported it. It is further admitted that Local 334 reiterated its petition for consolidation, which petition was not in accordance with the plan of consolidation proposed by International Representative Coyne.

15. The allegations of paragraph 18 are admitted.

16. The allegations of paragraph 19 are denied.

17. The allegations of paragraph 20 are admitted.

18. With respect to the allegations of paragraph 21, it is admitted that the Order for Consolidation divides Plaintiff along craft lines and that plumber members of Local 334 are to become members of surviving Local 14, while pipefitter members are to become members of surviving Local 274. The remaining allegations of paragraph 21 are denied. Defendant affirmatively states that the locations of the offices of surviving Locals 14 and 274 have not yet been determined. Defendant further states that those members of Local 334 who are in fact qualified as both plumbers and pipefitters will, under specific conditions, have the option of becoming members of either Local 14 or Local 274.

19. The allegations of paragraphs 22, 23, 24, 25, 26, 27, 28 and 29 are denied.

AS TO THE SECOND COUNT

1. Defendant repeats its answers to the allegations contained in paragraphs 1 through 21, inclusive of the First Count, as if set forth herein in full and makes them a part hereof.

2. Defendant denies the allegations of paragraphs 2, 3 and 4.

3. Defendant repeats its answers to the allegations contained in paragraphs 24 through 28 of the First Count, as if the same were set forth herein in full and makes them a part hereof.

AS TO THE THIRD COUNT

1. Defendant repeats its answers to the allegations contained in paragraphs 1 through 21, inclusive of the First Count, as if the same were set forth herein in full and makes them a part hereof.

2. The allegations of paragraphs 2 and 3 are denied.

3. Defendant repeats its answers to the allegations contained in paragraphs 24 through 28 of the First Count as if the same were set forth herein in full and makes them a part hereof.

FIRST SEPARATE DEFENSE

Plaintiff has failed to state a claim upon which relief may be granted.

SECOND SEPARATE DEFENSE

Plaintiff, and other local unions in the State of New Jersey, were advised by International Representative

Coyne that the United Association believed there to be excessive and superfluous local unions within the State of New Jersey. Such advice was given in January, 1977. International Representative Coyne advised all local unions within the State of New Jersey that they should provide a voluntary plan of consolidation of local unions not later than January 31, 1977, for consolidation by the General President of the United Association. Such local unions were informed that should they not submit voluntary plans for consolidation by January 31, 1977, International Representative Coyne would prepare recommendations for consolidation to the General President for his consideration and exercise of judgment pursuant to the Union Constitution. Such local unions failed to provide any plan for consolidation by January 31, 1977. By their failure, such local unions, including Plaintiff, have waived the right to object to the plan for consolidation as suggested by International Representative Coyne, presented at a hearing held May 10, 1977, adopted by the General President of the United Association, and approved by the Executive Board of the United Association.

THIRD SEPARATE DEFENSE

Plaintiff is estopped from complaining as to the consolidation of local unions.

FOURTH SEPARATE DEFENSE

Plaintiff participated in a full and fair hearing respecting a plan for consolidation of local unions within the State of New Jersey. Plaintiff submitted a plan for consolidation at a hearing held May 10, 1977. Such plan was considered by the Hearing Officer appointed by the General President and was fully discussed in a report of hearing filed with the General President of the United Association. The plan for consolidation actually adopted by the United Association differs from that suggested by

Local 334 at the hearing on May 10, 1977. The plan, as adopted, is a reasonable, rational plan for consolidation fully supported by credible evidence in the form of testimony taken at such hearing, and is a superior plan to that proposed by Plaintiff.

FIFTH SEPARATE DEFENSE

Neither the General President of the United Association nor the Executive Board has abused its discretion in adopting a plan for consolidation of local unions located within the State of New Jersey.

SIXTH SEPARATE DEFENSE

The consolidation of local unions within the State of New Jersey, as adopted by the General President of the United Association and approved by the Executive Board, serves the greater good of the majority of members of the United Association within the State of New Jersey. Therefore, more damage will be caused by the granting of an injunction preventing the full and complete implementation of such consolidation than will be caused by the denial of such injunction.

SEVENTH SEPARATE DEFENSE

Plaintiff has an adequate remedy at law.

EIGHTH SEPARATE DEFENSE

The consolidation will not result in any immediate reparable harm to the Plaintiff.

NINTH SEPARATE DEFENSE

The United Association has, in the consolidation, fully adhered to the provisions of the Constitution of the United Association of Journeymen and Apprentices of the

Plumbing and Pipe Fitting Industry of the United States and Canada. It has not breached any contractual obligation to the Plaintiff.

McCARTER & ENGLISH
Attorneys for Defendant

By: /s/ RICHARD C. COOPER
A Member of the Firm

Of Counsel:

O'DONOGHUE & O'DONOGHUE
1912 Sunderland Place, N.W.
Washington, D.C. 20036

/s/ [Illegible]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Civil Action No. 77-1769

UNITED ASSOCIATION, LOCAL NO. 334,
Plaintiff,

vs.

UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, AFL-CIO,
Defendant.

ORDER—Filed October 20, 1977

This matter being opened to the Court upon Motion of plaintiff for an order remanding the within cause of action back to the Superior Court of New Jersey, Chancery Division, Morris County, and upon application of Locals 523 and 124 of the United Association for an Order to Show Cause why said Locals 523 and 124 should not be granted leave to intervene as Partys Plaintiff, for a Temporary Restraining Order restraining enforcement of the Order of Consolidation as to said local unions, John A. Craner, Esq. appearing for plaintiff and proposed plaintiffs in intervention, Craner & Nelson, attorneys, Richard C. Cooper, Esq., appearing for defendant, McCarter & English, Esqs., attorneys, and David Friedland, Esq., apeparing for Local 274, United Association, and the Court having read the moving papers, briefs and proposed Order to Show Cause and Temporary Restraining Order and having heard the argument of counsel;

It is on this 19th day of October, 1977, Ordered that the motion for remand is hereby denied for the reasons more fully expressed in the record.

It is further Ordered that the Order of Show Cause and Temporary Restraining Order on behalf of Locals 523 and 124 is hereby denied.

It is further Ordered, for reasons more fully expressed in the record of oral argument that leave is granted to Locals 523, 49, 326, 274, 24, 124, 765, 84 and 14 and newly chartered Locals 274, 14 and Metal Trades Local 855, all of which are the locals comprising Area I both past and present, to appear in the within action as *amicus curiae* and with further leave granted for said locals aforesaid to file petitions for intervention as partys plaintiff or defendant in accordance with the Federal Rules of Civil Procedure, said petitions for intervention to be filed with the Court no later than October 28, 1977.

It is further Ordered that the attorneys for plaintiff shall cause to be served upon each local union aforesaid a copy of this Order and a copy of the Amended Complaint and Answer of defendant by mailing same to the president of said local union by certified mail, return receipt requested.

/s/ Vincent P. Buinno
VINCENT P. BUINNO
J.U.S.D.C.

[EXCERPTS FROM NOVEMBER 8, 1977
AFFIDAVIT OF THOMAS BRENNAN]

* * * *

14. Even though the United States District Court denied all injunctive relief, we have been advised by various officers of the other local unions that Mr. Craner has advised them that the United States District Court would be reversed and that these locals would ultimately succeed in remaining as consolidated locals and that in the interim period of time, they had a right not to turn over any of the records and assets to Local 14 and Local 274; and, as a result, Vince Galamie of Local 124 informed me that the Executive Board and former officers of Local 124 had appointed him an agent to reclaim all of the books and records of that local. He said that Mr. Craner advised them that they could continue on working as they had been in the past. Since that time, Local 124 has opened an office and has defied all orders to cooperate in the consolidation.

15. This situation is causing complete chaos in the industry. Failure of the various locals to obey the lawful orders of the International Union is disrupting the affairs of the local in the following ways:

A. Upon information and belief, monies are being expended by various locals in violation of orders of the International Union and by officers who no longer have any authority. Said act may constitute a violation of the criminal laws of the United States.

B. Employers do not know who to deal with in processing grievances or negotiating collective bargaining agreements.

C. It is becoming virtually impossible to keep track of members who are working in order to collect fringe benefits and contributions for the Welfare and Pension Funds.

D. The employees are in a complete state of confusion because they do not know who their union is nor who to contact to represent them.

D. I have also been informed that various locals have been collecting dues and issuing dues stamps, all in violation of law.

16. Various collective bargaining contracts affecting members of Locals 124, 84, 326 and 14 expired on November 1, 1977.

I have been negotiating with all of the Employers on behalf of all the members of Local 14, including members of all locals except Local 334. These employers have recognized Local 14 as the proper representatives and as the successor local. We have negotiated complete equalization of all financial contributions to the Pension, Welfare and Education programs. The new contract raises the benefits of members of the various locals to the highest standard presently prevailing in the area and results in a substantial increase in these contributions to the various funds thus, making it possible to achieve one of the benefits of consolidation; namely, uniform pension and welfare programs in the area. Not one member of these locals will lose any benefits whatsoever as a result of this consolidation. Quite to the contrary, benefits, will, in all likelihood, be raised because of the increased amount of contributions to the Plan. Furthermore, the financial soundness of these Pension plans will be improved by these new contracts.

The failure of Locals 84, 124 and 326 to notify the employers that the consolidation has become effective, however, has caused the employers to advise us that prior contracts are still in full force and effect and that they are not obligated to negotiate concerning increased wages, hours, terms of employment, etc., until such time that the consolidation takes effect. This bizarre development would have meant that employees working under the jurisdic-

tion of these three former local unions would not be able to have the benefit of increased wages, hours and working conditions until such time that the consolidation becomes effective. Thus, the position of these locals opposing consolidation was to the detriment of their own membership.

17. This predicament was avoided because Local 14 has negotiated a contract on behalf of these various locals, having convinced the employers that the consolidation was effective. The new contract, in full force and effective November 1st provides substantial increases in benefits for the members of all of these locals. If this court were now to enjoin the consolidation, disaster would befall the entire plumbing and pipefitting industry. Undoubtedly, the provisions of this new collective bargaining contract would be nullified and employers would have to begin again bargaining with the various other local unions.

18. It is precisely this situation which the order of consolidation sought to avoid. Namely, a situation in which employers could negotiate with individual locals collective bargaining agreements containing differential rates, working conditions terms of employment in the New Jersey area. A copy of a chart showing the differentials in wages and pension contributions which preceded the merger is attached hereto and marked Exhibit "B" together with a copy of the charter showing the benefits from the new contract, which is marked Exhibit "C".

19. One of the main benefits of consolidation (uniformity in wage and pension structures) is well on the way to being achieved, as is apparent from referring to Exhibit "C".

20. A meeting was held with the members of the trustees of the various pension and welfare plans on or about October 27th, and at that meeting various pro-

posals were discussed concerning methods of consolidating the pension and welfare plans. Attached is a memoranda from the Fund Actuary concerning various proposals which is marked Exhibit "D". None of these proposals were adopted; they were just discussed. However, a general agreement was reached among the trustees to support equalization of contributions to the fund and to cooperate in an effort to achieve consolidation.

21. Various Affidavits claim that employment opportunities are being interfered with as a result of the consolidation and that members are being denied the right to work at their chosen occupation. These allegations are entirely general in nature and not one specific example is given in any of the affidavits of an employee so affected. Quite to the contrary, no employee has been deprived of any work opportunity as a result of the Order of Consolidation. This is because all of the locals met subsequent to August 15th and agreed to continue referring employees out based upon their former local territory until such time that this matter was fully resolved. There is less employment in the Hudson County area than there is in the territorial jurisdiction of the local complaining that employees have been sent from one local to another to displace employment, who otherwise would have been working. In point of fact, the former agents of the old local unions have been operating the hiring halls and making their own referrals.

22. All of this has been done under the supervision of Local 14 as the home local union.

23. A meeting of Local 14 was held September 23, 1977 and the Order of Consolidation was read. This was a general membership meeting of all of the members of all local unions consolidated into Local 14. There was a full and complete discussion of the consolidation at the aforesaid meeting. Thus, Local 14 has actually commenced functioning and has so functioned since the Order of Consolidation was entered.

24. Pursuant to the provisions of Federal law, I am a fiduciary with respect to all funds of Local 14 and I have an obligation to bargain in good faith on behalf of all members of Local 14 and to represent them fairly in matters regarding the local. The refusal of various officers and members of former local unions to obey the lawful orders of the International Union and to obey my orders in connection with consolidation are making it impossible for me to fulfill my duty to administer the affairs of the local in accordance with law.

25. Many of these locals were in financial difficulty prior to the consolidation and our local has been paying the bills for these local unions. For example, Local 84 turned over $8,000 to Local 14 General Fund, which is being held in escrow; but, the salary of former business agent, John Harvey is being paid by Local 14 and all of their liabilities have been paid. Thus, members of Local 14 as a whole have been financially assuming the liabilities of these various locals for sometime now and are not receiving the benefits of the consolidation. The same problem exists with respect to Local 124, which was also in bad financial shape. The liabilities of these locals will exceed their assets.

26. As of the writing of this Affidavit, great turmoil and uncertainty exists in the Plumbing and Pipefitting Industry as a result of the fact that the members of the local unions are getting conflicting legal advice with respect to the validity of the consolidation. Only a determination by this Court and a final declaration can put an end to this conflict and make it possible for us to continue representing our members.

27. Accordingly, I pray for such a declaration.

/s/ Thomas Brennan

Sworn and Subscribed to before me this 8th day of November, 1977.

/s/ Kathleen A. McCarthy

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Civil Action No. 77-2266

UNITED ASSOCIATION, LOCALS NO. 330, 309, 245 and 122, UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA,

Plaintiff

v.

UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, AFL-CIO,

Defendant

AFFIDAVIT OF MARTIN J. WARD—
Filed November 10, 1977 (Without Exhibits)

DISTRICT OF COLUMBIA: ss

MARTIN J. WARD, being first duly sworn upon oath, says:

1. That I am the duly elected General President of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO (hereinafter referred to as the "United Association"). I have served in this capacity since June 1, 1971. I first became an officer of the United Association on July 1, 1958, when I was appointed to the office of Assistant General Secretary-Treasurer. Prior to becoming an officer of the United Association, I was Business Manager of Local 597 of Chicago, Illinois. I first joined the United Association in 1937 as an apprentice steamfitter member of Local 597. I completed my apprenticeship in 1942 and until my election to a full time office in Local 597, I worked at the trade of journeyman steamfitter.

2. The United Association is a labor organization with approximately 335,000 members in approximately 565 local unions. The work jurisdiction of the United Association is set forth in pages 136-141 of the current Constitution (attached hereto as Exhibit A). It embraces pipe of every form and description and wherever located. The work jurisdiction of the United Association includes the work of several recognized separate trades. They include, *inter alia*, the trades of plumbmer, [sic] steamfitter-pipefitter (hereinafter referred to as "pipefitter"),[1] lead burner and sprinkler fitter.[2] Within these trades there are also recognized special skills. For example, cross country pipe line construction, instrument fitting—the calibration and adjustments on piping systems and controls, pipe welding and the installation and servicing of refrigeration equipment are all special skills within the pipefitter trade. There are pipefitter members who exclusively perform the work of their special skills. The line of demarcation between the trades is determined by the purpose of the piping system. Thus, the work of the plumbing trade includes domestic, water and sewer

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[1] At the turn of the century this trade was generally called the steamfitter trade. The term pipefitter is a development that started in the late 1930's to reflect that the steamfitter trade encompasses something more than heating and cooling. It also includes process piping in industrial plants. The term steamfitter and/or steamfitter-pipefitter have identical meanings insofar as they are used in the United Association.

[2] In this regard, it should be noted that prior to the official name of the International Union being shortened to "United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry", its official name was the "UNITED ASSOCIATION OF JOURNEYMEN PLUMBERS AND STEAM FITTERS of the United States and Canada, Composed of Journeymen Plumbers, Gas Fitters, Steam Fitters, Sprinkler Fitters, Railroad Fitters, Marine Plumbers, Marine Fitters, General Pipefitters and their Helpers and Apprentices, who have jurisdiction over every branch of the Pipe Fitting Industry."

pipe—work covered by the plumbing code. The pipefitting trade includes beating, cooling and industrial pipe. The lead burning trade encompasses all lead burning work in the plumbing and pipefitting industry and the work of the sprinkler fitter trade is pipe for automatic fire extinguisher systems.

3. Since its formation in 1912, and continuing to the present, the United Association has consistently chartered building and construction local unions with trade jurisdiction in their respective geographic territories over one or more—but less than all—of these separate and distinct trades within the plumbing and pipefitting industry. For example, as of July 1, 1976, 43 of the local unions chartered by the United Association have trade jurisdiction over *only* the pipefitting trade in their respective geographical territories. There are 55 United Association local unions with trade jurisdiction over *only* the plumbing trade. Seven United Association local unions are chartered with trade jurisdiction over *only* the lead burning trade. Nineteen United Association local unions are chartered with trade jurisdiction over *only* sprinkler fitting work. Other United Association locals have been chartered with trade jurisdiction over two separate trades, for example, the plumbing and pipefitting trades or the pipefitting and sprinkler fitting trades, etc. *No* local union chartered by the United Association has trade jurisdiction in its geographic area over *all* of the separate trades within the overall trade jurisdiction of the United Association.

5. The single trade plumber and pipefitter local unions are generally located in the major cities throughout the United States and they have the largest membership of the United Association local unions. For example, the single trade Steamfitter Local 597 of Chicago and the single trade Plumbers Local 130 of Chicago have in excess of 15,000 members, more than the membership in

the entire State of New Jersey with its 27 local unions prior to the Orders of Consolidation. The dual trade local unions, when initially chartered, were in outlying areas and more often than not these were areas where there were not sufficient members in each of the trades to support a single trade local union.

6. While many of these locals have always existed as a "single trade" local union (i.e. having trade jurisdiction over only one trade within the overall trade jurisdiction of the United Association), others have resulted from the issuance of a separate charter to the members of one trade within a former "dual-trade" local union (i.e. a local having trade jurisdiction over two separate trades. For example, Local 16 of Omaha, Nebraska, was originally chartered as a dual trade plumber and pipefitter local. In 1914, the pipefitter members of Local 16 were issued a charter as Local 464—a single trade pipefitter local. Local 17 of Memphis, Tennessee, is another example. In 1914, a single trade separate charter was issued for the pipefitter members of local 17. More recent examples are Local 211 of Houston, Texas and Local 250 of Southern California. They are single trade pipefitter locals that were split off from dual trade locals.

7. Section 81 and Section 3 of the United Association Constitution authorize the chartering of three types of local unions: building and construction trades local unions, metal trades local unions and combination local unions, i.e. a combination building and construction trades and metal trades.[3]

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[3] The term "combination local" is used in the plaintiff's complaint to describe a local union that has jurisdiction over both the plumber trade and the pipefitter trade. Technically, under the Constitution, this is not the proper use of the term. Section 83 of the Constitution defines a combination local union as a local union that has been given building construction jurisdiction, either as a single or dual trade, and also has been given metal trades jurisdiction. Sections 3 and 81 provide that the United Association shall

8. While the relevant sections (i.e. Sections 81 and 3) of the present version of the Constitution do not expressly provide for the chartering of building and construction trades local unions (or the building and construction trades portion of a combination charter) with trade jurisdiction over less than all of the trades within the overall trade jurisdiction and the United Association, earlier versions of the Constitution did expressly provide for the chartering of such local unions. For example, the 1942 version of the Constitution provided, under a chapter entitled "Charters", that:

> . . . . In cities or towns where where [sic] is a mixed local union, *any branch of the craft* shall be granted *a separate charter* on application of two thirds of said craft in that local union for at least six months previous to the application.
>
> When an application is made for a charter, those making the application shall state *for which branch of the craft* it is wanted, and it shall be so stated on the face of the charter and if *for two or more branches*, it shall so state. (emphasis added)

9. Moreover, the earlier versions of the Constitutions made it clear that members of the United Association

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charter three types of local unions: a building and construction local union, a metal trades local union, or a combination local union, that is a local union with building trades jurisdiction and metal trades jurisdiction. The jurisdiction of the metal trades is defined in Metal Trades Sections 1 and 5 (pages 120-122 of the Constitution, Exhibit A) as work related to the plumbing and pipefitting industry. Examples of what the United Association considers to be within the metal trades jurisdiction are the shipbuilding industry, the gas utility industry, maintenance work in plants and production work in fabrication shops. We have chartered 11 marine metal trades local unions, 7 gas worker metal trades locals and several metal trades locals with jurisdiction over maintenance in a particular shop or territory. Most local unions with jurisdiction over a single trade or two trades in the building and construction industry have also been granted metal trades jurisdiction.

were intended to work principally at only one of the branches of the trade. All new members of the United Association were required to list their particular trade when making application for membership. And the Constitution specifically provided that:

> In all local unions organized separately or combined, members of any one branch of the trade are prohibited from working at that of another, providing that a member or members of such other branch can be secured within the jurisdiction of the local.

These early versions of the United Association Constitution made it is clear that it was the established policy of the United Association to charter local unions with trade jurisdiction over one or more—but less than all—of the separate recognized trades within the plumbing and pipefitting industry.

10. In 1946, the supreme governing body of the United Association, i.e. its National Convention, voted to change this practice and, accordingly, amended the United Association Constitution in order to eliminate the trade lines of demarcation between the various crafts within the United Association. Thus, the 1946 version of the Constitution was amended to provide as follows:

> The United Association of Journeymen and Apprentices of the United States and Canada, having full and exclusive trade jurisdiction over the plumbing and pipefitting industry, shall be composed of journeymen and apprentices of *one craft without jurisdictional lines of demarcation.*
>
> Abolishment of Trade Lines. That there shall be *one trade craft in the plumbing and pipe fitting industry* for all journeymen and apprentice members of the United Association and all journeymen members shall be permited without restriction or bar *to perform all work governed by the trade jurisdic-*

tion of the United Association; all apprentice members of the United Association shall, under the supervision and control of journeymen members, be permitted without restriction or bar to perform all work covered by the trade jurisdiction of the United Association.

Jurisdiction of Work. The United Association having full and exclusive jurisdiction over the plumbing and pipe fitting industry, including the supervision, fabrication, installation and maintenance of plumbing and pipe fitting installations of every description and character, shall be composed of *journeymen and apprentices of one craft, without jurisdictional lines of demarcation.*

The United Association shall charter three types of Local Unions; Building and Construction Trades Local Union, Metal Trades Local Union, and a Combination Local Union. There shall be *but one trade craft in the plumbing and pipe fitter industry for all journeymen and apprentice members of the United Association,* and all journeymen members and apprentice members of the United Association shall be permitted without restriction or bar to perform all work governed by the trade jurisdiction of the United Association. (emphasis added)

To implement this change in the basic organization of the United Association, the 1946 Constitution was also amended to provide for a system of District Councils. Under these amendments, the functions of the District Councils were to include the following:

Every District Council shall immediately set up a committee or joint committee under the supervision of the General Officers to devise ways and means to amend, change and strengthen any existing laws, either Local, State or Provincial *governing the dif-*

ferent phases of the Plumbing and Pipe Fitting Industry in order that all journeymen members and apprentice members can be employed on all work covered under the jurisdiction of the United Association.

It is understood that no changes can be made in any agreements now existing in the various localities until all restrictions and bars are removed. The lines of demarcation now covered by any type of Trade Line Agreement will remain in existence and in force between the crafts of a local union or unions until the foregoing restrictions and bars have been removed.

Apprentice training programs shall be merged and will function under the supervision of the District Council so that uniform training will be given to all apprentices in the Plumbing and Pipe Fitting Industries. (emphasis added)

The Constitution was further amended in 1946 to provide that all apprentices were to receive training in "all phases of the plumbing and pipe fitting industry".

11. While these changes in the 1946 Constitution unquestionably reflect the adoption of a policy favoring the establishment of a "universal journeymen", i.e. a journeyman skilled in all of the trades associated with the plumbing and pipe fitting industry, as will be shown below, this policy was never implemented and was soon expressly abandoned by the supreme governing body of the United Association.

12. A review of the proceedings of the very first National Convention following the adoption of the "universal journeyman" concept, i.e. the 1951 Convention, discloses that little, if anything, had been done to implement the 1946 proposed changes. Thus, at page 25 of the 1951 Convention Report (Exhibit B) there appears

a "Breakdown of Classifications of Local Unions", of the United Association. As can readily be seen, local unions were still being organized along separate trade lines within the plumbing and pipefitting industry, i.e. local unions with trade jurisdiction over only plumbing, or only sprinkler fitting, or only lead burning, etc. Indeed, as can be seen from page 23 of the Report, Local 798 was ch rtered on November 21, 1949 with trade jurisdiction limited to one branch of the trade, i.e. transportation pipelines.

13. Pages 174 through 178 of the same 1951 Report contain a summary of the proceedings of the Committee on Appeals and Grievances. As can be seen, a number of these reports involved jurisdictiontal disputes between local unions with trade jurisdiction over separate branches of the industry. This clearly reflects the fact that although the 1946 Convention had endorsed the concept of a "universal journeyman" and the abandonment of trade lines of demarcation between local unions, as of 1951 single trade local unions were functioning as before and trade line agreements between single trade local were still being given full force and effect.

14. As previously stated, the primary purpose for the creation of District Councils by the 1946 Convention was to work for the removal of all restrictions and bars to an individual working at all phases of the plumbing and pipe fitting industry. This meant the elimination of provisions from existing city, county and state codes that required than an individual possess a plumber's or steamfitter's license before he could perform plumbing work in the case of a plumber and steamfitting work in the case of a steamfitter. These license restrictions were never modified and, as a result, the concept of a "universal journeyman" was never realized.

15. The record of the proceedings of the next National Convention, i.e. the 1956 Convention, reveals an express

intent to abandon the experiment of a "universal journeyman". As noted on page 2 of the Summary of Proceedings of the 1956 Convention (see Exhibit C), the Convention adopted a Resolution providing that all membership books of United Association members contain a designation of the trade of each member, i.e. each member was henceforth to be designated either a plumber, a steam fitter or pipe fitter, a sprinkler fitter or a lead burner.

16. The record of the 1956 Convention also indicates that the Convention rejected a series of resolutions that would have amended the Constitution to provide that local unions have trade jurisdiction over the entire plumbing and pipefitting industry within its geographic area. Similarly, as reported at page 1 of the Fourth Day's proceedings (Exhibit C), the Convention rejected an effort to take jurisdiction over the sprinkler fitting trade away from the separate sprinkler fitter local unions and give it to "multi-trade" local unions. Both these actions reflect a rejection by the 1956 Convention of the 1946 concept of a "universal journeyman's and of the elimination of trade lines of demarcation between local unions.

17. Section 230(n) of the present United Association Constitution was added by action of the 1956 Convention. It provides that a contractor who is traveling into the territorial jurisdiction of another local union may bring with him one building trades journeyman "*for each branch of the craft, that is, one plumber, one steamfitter or pipe fitter, one lead burner and one sprinkler fitter*". (emphasis added) Again, this amendment reflects an express abandonment by the 1956 Convention of the 1946 concept of "one craft without jurisdictional lines of demarcation."

18. If there were any doubts regarding the continued viability of the 1946 concept of a single local union with trade jurisdiction over all branches of the plumbing and pipe fitting industry, those doubts were finally put to rest by action of the 1961 National Convention.

19. One of the first acts of the 1961 Convention was to reject a proposed Constitutional amendment which would have required that the entire trade jurisdiction of the United Association in any given geographic area be placed in a single building and construction trades local union (see Exhibit D).

20. Consistent with this philosophy, the 1961 Convention expressly repealed the major Constitutional provisions added by the 1946 Convention to eliminate the lines of trade demarcation within the United Association. It will be recalled that the following language was added to the Constitution in 1946:

> . . . . The United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, having full and exclusive trade jurisdiction over the plumbing and pipe fitting industry, *shall be composed of journeymen and apprentices of one craft without jurisdictional lines of demarcation.* (emphasis added)

This provision was deleted in its entirety by action of the 1961 Convention. Similarly, the following language added in 1946 was deleted in its entirety by the 1961 Convention:

> SEC. 5. *There shall be one trade craft in the plumbing and pipe fitting industry for all journeymen and apprentice members* of the United Association and all journeymen *members shall be permitted without restriction or bar to perform all work governed by the trade jurisdiction of the United Association;* all apprentice members of the United Association shall, under the supervision and control of journeymen members, be permitted without restriction or bar to perform all work covered by the trade jurisdiction of the United Association. (emphasis added)

And the following provisions added to the Constitution in 1946 were amended as indicated below. The 1946 version provided:

> The United Association having full and exclusive jurisdiction over the plumbing and pipe fitting industry, including the supervision, fabrication, installation and maintenance of plumbing and pipe fitting installations of every description and character, shall be composed of journeymen and apprentices *of one craft without jurisdictional lines of demarcation.*
>
> The United Association shall charter three types of Local Unions; Building and Construction Trades Local Unions, Metal Trades Local Unions, and Combination Local Unions. *There shall be but one trade craft in the plumbing and pipe fitting industry* for all journeymen and apprentice members of the United Association, and *all journeymen members and apprentice members of the United Association shall be permitted without restriction or bar to perform all work governed by the trade jurisdiction of the United Association.* (emphasis added)

The above provisions were amended in 1961 to provide as follows:

> The United Association having full and exclusive jurisdiction over the plumbing and pipe fitting industry, including the supervision, fabrication, installation and maintenance of plumbing and pipe fitting installations of every description and character, shall be composed of journeymen and apprentices.
>
> The united [sic] Association shall charter three types of local unions: building and construction trades local unions, metal trade local unions, and combination local unions.

It is the above language—adopted by the 1961 Convention in an express endeavor to "undo" what had been done by the 1946 Convention—which appears in the present United Association Constitution.

21. The action of the 1961 Convention demonstrates an express intent to terminate the 1946 experiment of a "universal journeyman" and to return to the practices which existed theretofore. Since those practices, as has been shown above, included the chartering of local unions with trade jurisdiction over one or more—but less than all—of the separate trades within the plumbing and pipe fitting industry, there can be no doubt that the chartering of such local unions is within the intended scope of the present language of the United Association Constitution.

22. It may be recalled that the 1946 amendments also called for the elimination of all restrictions from the plumbing and pipefitting codes which prevented a journeyman from working at all phases of the industry. As may be recalled, the 1946 Convention added the following provision to the Constitution:

> Every Local Union or District Council of the United Association shall establish a committee under the supervision of the General Officers to devise ways and means to amend, change, or strengthen all existing State, Provincial and Municipal laws or codes that regulate and control the plumbing and pipe fitting industry in the particular locality, *to the end that all journeymen and apprentice members can be employed on all work embraced in the trade jurisdiction of the United Association.*
>
> No changes can be made in any agreement now existing in the various localities until all restrictions and bars are removed. The lines of demarcation now covered by any type of a trade line agreement

> will remain in existence and in force between the craft of a Local Union or Local Unions until the foregoing restrictions and bars have been removed. Before any such agreements between Local Unions are voided or set aside *by virtue of the removal of the bar or trade line demarcations by this Constitution*, the Local Unions or Local Union involved must have the approval of the General Officers. (emphasis added)

This provision was amended by action of the 1961 Convention to simply provide that:

> Every Local Union or District Council of the United Association shall establish a committee under the supervision of the General Officers to devise ways and means to amend, change, or strengthen all existing State, Provincial and Municipal laws or codes that regulate and control the plumbing and pipe fitting industry in the particular locality.

23. As part of the 1946 revisions, the procedure for resolving jurisdictional disputes between local unions having trade jurisdiction over separate branches of the industry were deleted. This was done on the assumption that with the creation of a single trade local union with jurisdiction over all branches of the industry there would be no need for such a procedure. With the express rejection of this concept by the 1961 Convention, a need arose to reincorporate in the Constitution a procedure for resolving jurisdictional disputes between locals having trade jurisdiction over separate branches of the industry. The 1961 Convention met this need by replacing in the Constitution just such a procedure (see Exhibit D-1).

24. Finally, the 1961 Convention amended the Journeymen and Apprentice Training provisions of the Constitution in order to reflect the return to a policy of separate branches within the overall trade jurisdiction of

the United Association. Thus, in 1946, these provisions had been changed to provide that:

> All Local Unions and/or District Councils chartered by the United Association shall appoint a committee who will adopt and set up a journeyman training program that will enable all journeymen members to acquire a full and complete knowledge *of all types and kinds of work covered by the jurisdiction of the United Association.*
>
> All Local Unions of the Association shall adopt an apprentice system and related apprentice training that will afford to all apprentices *a full and complete knowledge of all types and kinds of work covered by the jurisdiction of the United Association,* and each Local Union shall appoint a committee on apprentice training whose duties shall be to set up an apprenticeship training program and related apprenticeship training courses covering *all branches of the trade,* the minimum of which shall conform with the Federal Apprenticeship Standards as approved by the United Association. (emphasis added)

This 1946 language was changed in 1961 to provide that:

> All local unions shall appoint a committee which shall adopt and set up an advanced journeyman training program that will enable journeymen members to acquire a full and complete knowledge of the advancement and new techniques and skills *in the craft covered by the jurisdiction of his local union.* All local unions of the United Association shall adopt an apprentice system and related apprentice training that will afford apprentices a full and complete knowledge of *the particular craft or trade covered by the jurisdiction of the local union.* Each local union shall appoint a committee on apprentice train-

ing whose duties shall be to establish an apprentice training program and related apprentice training courses *covering the particular craft or trade of the local union,* and said apprentice training program shall conform with the Federal Apprenticeship Standards as approved by the United Association. (emphasis added)

25. At the 1971 Convention, a resolution was introduced suggesting a return to the 1946 idea that all of the trade jurisdiction of the United Association in any given geographic area be placed in one local union. The resolution was soundly defeated.

26. The 1976 Convention added the present subsection (b) to Section 153 governing the procedure for building trades journeymen to change their trade classification. Thus, present Section 153(b) provides:

> The General Secretary-Treasurer may approve a member's application for a change of trade classification provided the applicant member's Local Union certifies that the member applying for the trade classification change is qualified in the new trade classification or the applicant member has passed a satisfactory examination as to his skill and ability as a Building and Construction Trades Journeyman *in the changed trade classification. Straight line local Unions can certify as to qualification for trade classification change in their trade only.* (emphasis added)

This provision expressly recognizes both the fact that there are separate trades within the overall trade jurisdiction of the United Association as well as the fact that some local unions are chartered with trade jurisdiction over only one of these trades, i.e. "straight line local unions".

27. To summarize, the above history of the evolution of the current language in the United Association Constitution clearly establishes that prior to 1946, the Constitution expressly recognized separate trades within the United Association and the authority of the United Association to charter local unions with trade jurisdiction over less than all of these separate trades. In 1946, many sections of the Constitution, including the sections governing the chartering of local unions, were rewritten to reflect the adoption by the 1946 Convention of the experimental concept of a universal journeyman skilled in all phases of the plumbing and pipe fitting industry. The concept soon proved unworkable, however, and most of the 1946 amendments were never implemented. Thereafter, piecemeal efforts at conforming the language of the Constitution to the actual practices of the United Association were made by subsequent National Conventions. Unfortunately, this "piecemeal legislation" has resulted in some lingering ambiguity regarding to the particular wording of certain sections of the Constitution, including the sections dealing with the types of charters which may be issued by the United Association. However, when viewed in its entirety, particularly in light of the above history of how these Constitutional sections evolved, there can be no question that the intent of the language in the present Constitution is to recognize the separate and distinct trades within the United Association and the authority of the United Association to establish local unions with trade jurisdiction over less than all these trades.

28. The consolidation of local unions is governed by Section 86 of the United Association Constitution. The present language of Section 86 was specifically adopted by action of the 1961 Convention as a result of litigation arising out of the following events. In 1944 the United Association General President and General Executive Board ordered the consolidation of five dual trade local

uuions in Massachusetts, Locals 81, 201, 289, 448 and 550, with two single trade locals, Local 12, a plumbers local, and Local 537, a steamfittes [sic] local. The plumber members of the five dual trade locals were to be transferred to Local 12 and the pipefitter members of these locals to Local 537. Some of the dual trade locals filed suit in the Massachusetts State Courts, alleging that under the section of the Constitution dealing with consolidation of locals, then Section 131, the United Association could not consolidate a local into two locals and divide the membership accordingly. In 1947, the issue was decided by the Massachusetts Supreme Court in the case of *Alfred J. Cameron, et al.* v. *Martin P. Durkin, et al.* 74 N.E. 2d 671. The Court decided that the consolidation could not be ordered, since Section 131 of the Constitution spoke only of consolidating locals into "one local union"—and not *more than one* local union, as the United Association had directed in ordering the plumber members of the five dual trade locals into Local 12 and pipefitter members into Local 537. Reports on the status and final resolution of the case were made at the 1946 and 1951 United Association Conventions (Exhibits E and F). At the 1961 Convention, the language of the provision of the Constitution dealing with consolidation of locals (which between 1944 and 1961 had been renumbered from Section 131 to Section 84), was amended to provide that two or more local unions could be consolidated in "one or more local unions". The reason for the change is explained in the Report of the Committee on Laws of the 1961 General Convention (Exhibit G). On the advice of the United Association's legal counsel, the language "one or more" was added to the consolidation section of the Constitution specifically in order to supply the required Constitutional authority for the type of consolidation attempted in Massachusetts in 1944 (Locals 81, 201, 289, 448, 550 and 12 and 537) which the Supreme Court of the state found lacking in the case of

Cameron v. *Durkin.* To provide such authority was the sole intent of the change in language, and it was believed that such language was sufficient to provide such authority.

29. Since the time the United Association was first established, there have been consolidations of local unions. I have reviewed our records back as far as 1961 and I find that, since 1961, there have been over 175 mergers, that is consolidations of local unions. Attached as Exhibit E is a list of the consolidations during the following periods:

July 1, 1961-June 30, 1966	86
July 1, 1966-June 30, 1971	68
July 1, 1971-June 30, 1976	85

Of the 26 consolidations during the 1961-66 period, three of the consolidations involved consolidating a local with jurisdiction over two trades by consolidating the plumber members of that local with a single trade plumber local union and the pipefitter members of that local with a single trade pipefitter local union. Of the 68 consolidations during the 1966-71 period, six involved consolidations of the plumber members of a dual trade local with a single trade plumbers local and the pipefitter members of the dual trade local with a single trade pipefitters local. A seventh consolidation involved a consolidation of the sprinkler fitter members of Road Sprinkler Fitters Local of Canada with nine Canadian building and construction trades local unions. Of the 85 mergers during the 1971-76 period, seven involved a consolidation of the plumber members of a dual trade local with a single trade plumber local and the pipefitter members of the same dual trade local with a single trade pipefitter local. A red asterisk has been placed on Exhibit E to indicate those consolidations that involved a consolidation of the plumber and steamfitter members of a dual trade local into single trade local unions along trade lines.

30. As the statistics indicate, consolidations of United Association local unions are on the increase over the five year periods ending July 1, 1976. There is a reason for the increase and that reason is that the General Officers of the United Association have concluded that the United Association has too many local unions and that it is in the best interest of the membership of the United Association, both locally and as a whole, that there be consolidations. One of the major weaknesses of unionized segments of the construction industry has been the fragmented pattern of collective bargaining. Where you have a number of local unions in a geographical area, each with the right of bargaining its own collective bargaining agreement, the industry has experienced strikes and ever escalating wage settlements. To illustrate, Local X whose collective bargaining agreement expires on May 1, settle for a $1.00 per hour economic settlement. Local Y, who is in the same general geographic area as Local X, has an agreement that expires on July 1. Local Y seeks to improve on local X's settlement, and, after a strike of several weeks or a threatened strike, Local Y settled for a $1.50 per hour settlement. During the past ten years, this pattern has repeated itself again and again. It has repeated itself to such an extent that it has affected the viability of the union contractor to compete with his non-uinion [sic] counterpart. Consolidation of local unions is the only realistic method within the structure of the United Association for developing long term wider patterns of collective bargaining that will provide stability for the industry.

31. Consolidations also allow for greater freedom of movement for contractors and the United Association members they employ. As it is now, a contractor can be headquartered in one local union's jurisdiction and, although he has a regular work force, when he goes 15 or 20 miles in either direction, he is into another local union's jurisdiction. He cannot utilize his regular work

force in that other local. He is required to hire locally. Consolidations of local unions provide the freedom of movement which is of benefit to both the contractor and his regular United Association employees.

32. Consolidations of local unions also serve to correct another serious weakness in the plumbing and pipefitting industry and that is the problem of reciprocity. Because of the cyclical nature of the construction industry and large industrial construction projects, many members of the United Association travel to find work in the jurisdiction of other local unions. Most of these traveling members never work long enough in the other local's jurisdiction to meet the vesting requirements of the local's pension plan. Unless there is reciprocity between fringe benefit funds, the traveler never obtains the benefit of the contributions that are paid in on his behalf when traveling. The United Association has attempted to correct this problem, in part by establishing in 1966 the Plumbers and Pipefitters National Pension Plan. As of August, 1976, 160 United Association local unions representing over 60,000 members in all geographical areas were participating in the National Plan. The National Plan has reciprocal agreements with any plan of a United Association local union that is willing to enter into a reciprocal agreement. At the last three Conventions of the United Association—1966, 1971 and 1976—the delegates have adopted strong resolutions supporting reciprocity and its concept that money follows the man. Attached as Exhibit I is an excerpt from a 1976 Convention proceeding setting forth the resolutions and report adopted by the Convention regarding reciprocity. Consolidations generally result in a merger of fringe benefits and the adoption of reciprocal arrangements.

33. Consolidations also serve the important purpose of increasing work opportunities for the members. There are United Association local unions whose membership

has not grown in years and the local relies on travelers to fill its manpower needs. A consolidation of such a local with a local that has unemployment can be of benefit to the membership of both local unions. It results in a local, after the consolidation, that can meet manpower requirements with its own membership. Except for the very large industrial projects, such as a power plant, a local union should have a size membership that is at least equal to the normal work force requirements in its area. A local should not be relying on travelers to man its normal work.

34. Local unions that have only one full time officer cannot, in the judgment of the General Officers of the United Association, do an adequate job of policing their collective bargaining agreements or organizing the non-union contractors that are growing at an absolutely alarming rate. With the paper work and record keeping that is involved in the operation of any local union and the meetings regarding contractor and member problems and the fringe benefit funds, a single full time officer of a local does not have time to be in the field organzing the non-union contractor. Consolidation of small local unions into larger local unions increases the opportunity for the consolidated local unions to have more representatives in the field organizing.

35. With regard to the Order of Consolidation in the present case, Hearing Officer Blair, in his report, set forth the reasons why he concluded that the consolidations proposed by International Representative Coyne were in the best intrest of the membership. I adopted that report in its entirety. In adopting the report, I considered and rejected the various alternative proposals which were presented at the hearing. International Representative Coyne did not simply recommend consolidations of the local unions involved in the instant litigation. He recommended four plans that dealt with the entire

State of New Jersey. After receiving his plans, I appointed hearing officers to consider International Representative Coyne's plan for each of the four areas. The Order of Consolidation in the instant case involved Area II. There were also orders of consolidation in the other three areas.

36. The single trade locals resulting from the Order of Consolidation have advantages for the membership. Generally, single trade plumber local unions have controlled their work better than small dual trade local unions. It is in the dual trade locals where the small jobbing work and housing has gone almost totally non-union. It is my judgment that a single trade plumbers local in Area II has the best chance of recapturing the work of the plumber. The single trade pipefitters local, on the other hand, will be able to more effectively control industrial work. It is the industrial work where the United Association still has control but serious inroads are being made by non-union contractors in this field. There is no question in my mind that a single trade local can more effectively control industrial work than a dual trade local. I constantly receive complaints from contractors that men who are unqualified for industrial pipe work are being referred to work on industrial projects. A single trade local of pipefitters should be able to insure that contractors will have experienced and qualified pipefitters for that class of work and thereby be able to retain United Association control in the industrial field.

37. The proposed consolidation, and alternate plans for consolidation, have been presented to me and to the General Executive Board. The consolidation of all pipefitter members of the various local unions in Area II into a single local pipefitters union and the consolidation of all plumber members of local unions in the same area

into a single local plumbers union offer, in my opinion, significant advantages over any other consolidation. Hearings have been held concerning the proposed consolidation and alternate proposals have been considered and discussed. The alternate proposals have been rejected since they have a tendency to continue serious unemployment problems and to fail to deal with the problem of reciprocity as fully and completely as is necessary.

38. The consolidation of United Association local unions in Area II was considered by the General Executive Board at its meeting held August 8-10, 1977, in Lafayette, Indiana. After a thorough discussion of the proposed consolidation, it was moved, seconded and carried to approve the Order of Consolidation. All Board members were present and voted except William Gobile who was absent due to illness.

39. On November 10, 1977, I issued a Supplemental Order of Consolidation of Locals 24, 103, 122, 245, 300, 309 and 475, i.e., Area II (See Exhibit J). A similar Supplemental Order was simultaneously issued covering Locals 14, 49, 84, 124, 274, 326, 334, 523 and 765 in Northern New Jersey, i.e. Area I. This Supplemental Order was submitted to the General Executive Board by mail for approval. Approval of the Supplemental Order was received by telegram duties the week preceding issuance of the Order. In essence, the Supplemental Order is designed to preserve the status quo regarding the hiring practices which were utilized by the dual trade local unions involved prior to the issuance of the original Order of Consolidation. Specifically, those dual trade local unions which previously utilized a single out-of-work list for both plumbers and pipefitters will be allowed to

continue their previous referral procedures pending the outcome of the current litigation.

/s/ Martin J. Ward
MARTIN J. WARD

Subscribed and sworn to before me this 10 day of November, 1977

/s/ [Illegible]
Notary Public, D. C.

[EXCERPTS FROM THE JUNE 26, 1978 AFFIDAVIT OF JOHN A. CRANER]

* * * * *

5. On or about Thursday, June 22, 1978, plaintiff received a copy of a document entitled Second Supplemental Order of Consolidation-Locals 14, 49, 84, 124, 274, 326, 334, 523 and 765. See Exhibit B attached hereto. Although the Second Supplemental Order is dated May 24, 1978, this Affiant was never told of its existence by counsel for the United Association nor given a copy of it. Your affiant first saw it on Friday, June 23, 1978 along with the June 19, 1978 letter also annexed hereto. Had your affiant been aware of the existence of this most recent ruling by the United Association, this application would have been made a month ago. However, it is clear that it remained a secret and was not issued publicly until most recently.

This Second Supplemental Order of Consolidation revoked for all intents and purposes the referral and employment provisions of the Supplemental Order and reinstated the Order of Consolidation which is the subject of the instant lawsuit. Specifically, the Second Supplemental Order provides:

> Upon the termination dates of (the most recent collective bargaining) agreement (of locals 49, 124, 334, 523 and 765) referrals to employers within the territorial areas of the former locals shall be made in accordance with the hiring and referral provisions contained in the collective bargaining arguments then applicable to those territorial areas.

By letter dated June 19, 1978, all mechanical contractors performing work in the territorial jurisdictions of the plaintiff locals were advised that effective June 26, 1978 all mechanical contracting work being performed within the territorial jurisdictions of those locals would be covered by the collective bargaining agreements of

Pipefitters Local Union #274 (for pipefitters) and of Plumbers Local Union #14 (for plumbers). See Exhibit C attached hereto.

6. If the Second Supplemental Order Consolidation is allowed to take effect, as of today's date, the plaintiff, locals will be effectively consolidated with the new pipefitter and plumber locals and the subject matter of the instant litigation will be destroyed. The members of the plaintiff dual trade locals will be forced to elect whether to pursue the plumbing or pipefitting skills of their trade and to sign a consolidated work list in whichever aspect they select. They will be deprived of the work opportunities they would have enjoyed had the referral practices of their plaintiff local unions been allowed to continue in effect pending the outcome of this litigation and as they had been promised by the United Association in its Supplemental Order. Most importantly, the plaintiff locals and their members will be irreparably harmed because once the membership of the plaintiff locals is compelled to sign a consolidated list there will be no way to determine the employment opportunities they would have enjoyed had the Supplemental Order remained in effect and thus no way to compensate them fairly for their loss if they are ultimately successful on the merits in this cause. Moreover, there will be no way to return to them the opportunity to practice that phase of their trade they were forced to reject.

7. The defendant has advanced, in justification of its revocation of the Supplemental Order, a certain problem it encountered with the National Labor Relations Board under a virtually identical "Supplemental Order" governing other New Jersey locals. Essentially, the defendant argues in the first introductory paragraph of its Second Supplemental Order of Consolidation that since it was alleged before the Board that certain provisions of the Supplemental Order improperly extended a preference on

referrals to members of local unions based on their union membership, it must revoke the companion Supplemental Order entirely to protect itself from further legal action. The plaintiffs suggest that such action is unwarranted, unfair to them, and prejudicial to their legitimate claims in this cause.

At the outset, it is apparent that the infirmity, if any, in the Supplemental Order of Consolidation lies in paragraph 2 thereof which provides:

> In the event that a journeyman who is not a former member of Locals 39, 124, 334, 523 or 765 seeks to register for employment for work in the territory of the former local in which he seeks to register, the Business Agent assigned to this territory is to advise the journeymen that he may register for employment with either Local 14 or Local 274, depending upon the journeyman's qualifications and trade classification.

The plaintiffs herein suggest that the most reasonable and fair resolution to the problem is to permit qualified men from other territories to sign their referral registers if they so desire the same as they have been able to do in the past. Taking this approach, the defendant would obviate its potential problems with the Board, remain faithful to its representations to the Court and be fair to the plaintiff locals. There is absolutely no need to revoke the entire Supplemental Order when the most important part can be easily salvaged giving due regard to the defendant's concerns.

8. Lastly, it must be observed that the litigation is in a rather advanced stage, having been pretried and a Pretrial Order issued. In fact, the defendants referred to the Supplemental Order in its Pretrial Memorandum for the purpose of minimizing the importance of plaintiffs damage claims. Certainly, having early committed itself

to maintenance of the status quo, and lived with the practices and procedures established under the Supplemental Order for eight months, the defendant should not now be heard to complain and revoke its commitment, especially when the apparent reason for revoking it can easily be overcome.

/s/ John A. Craner
JOHN A. CRANER

Sworn to and subscribed to before me this 26th day of June 1978.

/s/ Ruth E. Berman
RUTH E. BERMAN

RUTH E. BERMAN
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Sept. 3, 1978

EXHIBIT A TO CRANER AFFIDAVIT

SUPPLEMENTAL ORDER OF CONSOLIDATION OF LOCALS 14, 49, 84, 124, 274, 326, 334, 523, 765

On August 4, an Order of Consolidation was issued consolidating Locals 14, 49, 84, 124, 274, 326, 334, 523 and 765. This Order did not clarify the procedures to be used in the referral and employment of former members of Locals 14, 84, 124, 326, 334, 523 and 765. In view of the litigation that has been instituted in New Jersey State and Federal Courts regarding the August 4, 1977, Order of Consolidation of Local 14, 49, 84, 124, 274, 326, 334, 523 and 765 wherein certain persons have expressed dissatisfaction with the impact of the Order upon hiring and referral lists, and with a view towards preserving the status quo with respect to employment opportunities of members of the former local unions involved in the consolidation, as General President of the United Association, pursuant to the provisions of Section 86 of the United Association Constitution, I am hereby supplementing the August 4, 1977 Order of Consolidation as follows:

First, pending a further order of the General President, the referral and employment of members of the former Locals 49, 124, 334, 523 and 765 shall be on the following basis:

1. Each of the Business Agents or other responsible official assigned to the territorial areas of the foregoing former Locals 49, 124, 334, 523 and 765 shall each maintain a referral list for the former members of such locals. Former members of each of the respective local unions shall be referred for work on the same basis as members of such former locals had been referred prior to August 4, 1977.

In the event that any of the Business Agents shall require additional manpower, such Business Agent shall telephone Local 14 if the manpower requirement is for

plumbers and Local 274 if the manpower requirement is for pipefitters. In determining whether the manpower requirement is for plumbers or pipefitters, traditional lines of demarcation between what is plumber's work and what is pipefitter's work shall be controlling. Should there arise a dispute as to whether the work for which additional manpower is required is properly categorized as plumber's work or pipefitter's work, the procedures as set forth in Section 4 of the United Association Constitution shall be followed.

2. In the event that a journeyman who is not a former member of Locals 49, 124, 334, 523 or 765 seeks to register for employment for work in the territory of the former local in which he seeks to register, the Business Agent assigned to this territory is to advise the journeyman that he may register for employment with either Local 14 or Local 274, depending upon the journeyman's qualifications and trade classification.

3. Apprentice members of former Locals 49, 124, 334, 523 and 765 shall be referred and employed in the territory of their former local unions in accordance with the referral and employment practices that were in effect at each local prior to the issuance of the Order of Consolidation on August 4, 1977.

4. Locals 14 and 274 and the Business Agents in the former territories of Locals 49, 124, 334, 523 and 765 who are administering referral lists shall keep records showing the name and date on which an applicant applied for referral and, for each applicant referred to a job, his name, date referred and the job to which he was referred.

5. If the implementation of the provisions of this Supplemental Order of Consolidation require modifications of existing collective bargaining agreements, Locals 14 and 274 are directed to take whatever actions are neces-

sary to effect modifications in the existing collective bargaining agreements to implement the provisions of this Supplemental Order of Consolidation.

Second, each of the local unions involved in the Order of Consolidation shall be immediately audited by a certified public accountant. Once the audit has been completed, all funds and properties of Locals 84, 124 and 326 shall be transferred to Local 14 and all funds and properties of Local 765 shall be transferred to Local 274. With respect to the funds and properties of Local Unions 49, 334 and 523, after the completion of the audits the funds and properties shall be transferred to Local Unions 14 and 274 who shall hold the funds and properties in trust pending a further order of the General President.

Third, this Supplemental Order of Consolidation shall be applied to and be binding upon Local 334 at such time as there is no outstanding Court Order prohibiting the Order of Consolidation and this Supplemental Order from being applied to Local 334.

Fourth, all persons who were formerly members of Locals 14, 49, 84, 124, 274, 326, 523 and 765 are advised that, except as modified herein, the Order of August 4, 1977, respecting consolidations of the locals is in effect as to them and such persons are further advised that they are to comply with the provisions of the Order of Consolidation and are to cooperate with the efforts of the officers of consolidated Locals 14 and 274 and with the representatives of the United Association in order to further the objectives of the United Association in the State of New Jersey.

Fifth, all of the terms and provisions of the Order of Consolidation dated August 4, 1977, that are not inconsistent with this Supplemental Order of Consolidation are hereby reaffirmed.

This Supplemental Order of Consolidation has been sactioned by the General Executive Board.

Dated this —— day of November, 1977.

MARTIN J. WARD
General President

EXHIBIT B TO CRANER AFFIDAVIT

SECOND SUPPLEMENTAL ORDER OF CONSOLIDATION
LOCALS 14, 49, 84, 124, 274, 326, 334, 523, and 765

On August 4, 1977, an Order of Consolidation was issued consolidating Locals 14, 49, 84, 124, 274, 326, 334, 523, and 765. The Order did not clarify the procedures to be used in the referral and employment of former members of former Locals 149, 122, 334, 523 and 765. In order to preserve the status-quo with respect to employment opportunities of members of these former local unions, a Supplemental Order of Consolidation was issued on November 3, 1977. This Supplemental Order of Consolidation in part attempted to provide that the referral and employment practices applicable to members of former Locals 49, 124, 334, 423 and 765 prior to the August 4, 1977, Order of Consolidation would be retained pending further Orders of the General President. The validity of virtually identical provisions of another Supplemental Order of Consolidation applicable to another area of New Jersey was questioned in charges filed with the 22nd Region of the National Labor Relations Board, which alleged that those provisions improperly extended a preference in referrals to members of certain former locals on the basis of their local union membership in order to remove any similar questions pertaining to the legality of the referral and employment practices implemented by the August 4, 1977 Supplemental Order of Consolidation, I am hereby issuing a Second Supplemental Order of Consolidation of Locals 14, 49, 84, 124, 274, 326, 334, 523, and 765.

This Second Supplemental Order of Consolidation is also intended to modify the provisions of the original August 4, 1977, Order of Consolidation with respect to the election of officers for consolidated Locals 14 and 274. The original Order of Consolidation provided that temporary officers appointed by me would serve as officers of Locals 14 and 274 until such time as an election of of-

ficers was held, to be held no later than one year from the date of the Order. However, unforseen delays in the complete implementation of the Order of Consolidation in all its respects have intervened since the date of the Order, resulting from litigation brought to challenge the validity of the Order and from difficulties in consolidating the fringe benefit funds of the former local unions affected by the Order. In my judgment, these delays have necessitated a postponement of election of officers of consolidated Locals 14 and 274, to the extent described below.

This Second Supplemental Order of Consolidation shall remain in effect pending further order of the General President.

First. The date by which elections of officials of Locals 14 and 274 must be held is hereby extended from one year from the date of the August 4, 1977, Order of Consolidation, until two years from that date. Until such elections are held, temporary officers appointed by me shall continue to serve in that capacity.

Second. Pending further Order of the General President, the referral of employment of Journeymen and Apprentices to employer within the territorial areas of former Locals 49, 124, 334, 523 and 765 on the following basis:

1. Locals 14 and 274 shall jointly maintain separate referral lists for each of the territorial areas of former Locals 49, 124, 334, 523 and 765. Referral of Journeymen to employers within the territorial areas shall be made in accordance with the hiring and referral provisions contained in the most recent collective bargaining agreements of these former locals. Upon the termination dates of these agreements, referrals to employers within the territorial areas of these former locals shall be made in accordance with the hiring and referral provisions contained in the collective bargaining agreements then applicable to those territorial areas.

2. Apprentices shall be referred and employed within the territorial areas of former Locals 49, 124, 334, 523 and 765 in accordance with the referral and employment provisions contained in the most recent collective bargaining agreements of these former locals. Upon the termination dates of these agreements, referrals and employment of Apprentices within these territorial areas shall be in accordance with the referral and employment provisions contained in the collective bargaining agreement then applicable to those territorial areas.

3. Locals 14 and 274, which are administering referral lists, shall keep records showing the name and date on which an applicant applied for referral, and for each applicant referred to a job to which he was referred.

4. The provisions contained in the November 3, 1977, Supplemental Order of Consolidation pertaining to the referral and employment of Journeymen and Apprentice members of former Locals 49, 124, 334, 523 and 765 are hereby revoked in full.

Third. All persons who are formerly members of Locals 14, 49, 84, 124, 274, 326, 334, 523, and 765 are advised that, except as modified therein, the August 4, 1977, Order of Consolidation and the November 3, 1977 Supplemental Order of Consolidation are in effect to them, and such persons are further advised that they are to comply with the provisions of these Orders and are to cooperate with the efforts of the officers of consolidated Locals 14 and 274 and with the representatives of the United Association in order to further the objectives of the United Association in the state of New Jersey.

Fourth. All of the terms and provisions of the August 4, 1977, Order of Consolidation and the November 3, 1977, Supplemental Order of Consolidation that are not inconsistent with this Second Supplemental Order of Consolidation are hereby reaffirmed.

This Second Supplemental Order of Consolidation has been sanctioned by the General Executive Board and shall be effective ten days after notice of the Order has been given to the attorney for the Plaintiffs in the case of Montesanto, et al. vs. Ward, et al.

/s/ Martin J. Ward
MARTIN J. WARD
General President

Dated this 4 day of May, 1978.

EXHIBIT C TO CRANER AFFIDAVIT

[LETTER ADDRESSED TO "ALL MECHANICAL CONTRACTORS PERFORMING WORK IN THE TERRITORIAL JURISDICTION OF FORMER U.A. LOCAL 334"]

BUILDING & CONSTRUCTION AND
METAL TRADES DIVISION LOCAL 274

United Association of Journeymen and Apprentices
of the Plumbing and Pipefitting Industry of
Hudson and Bergen Counties and Vicinity

1000 HENDRICKS CAUSEWAY • RIDGEFIELD, N. J. 07657
943-4700—4701-4702

June 19, 1978

TO: All Mechanical Contractors Performing Work In The Territorial Jurisdiction of Former U.A. Local 334.

Dear Contractor:

You are hereby notified that effective June 26, 1978 all mechanical contracting work being performed in the former territorial jurisdiction of former United Association Local Union #334, will be covered by the collective bargaining Agreements of Pipefitters Local Union #274 (For Pipefitters) and of Plumbers Local Union #14 (For Plumbers).

These agreements provide for the following wage and fringe benefit contributions.

Local Union #274

Wage	$12.30*
Welfare Fund	1.00
Pension Fund	1.00
Education Fund	.25
Vacation Fund	1.00
Industry Fund	.07
Total	$15.62

* Fifty cents (50¢) of this amount is to be held in accordance with order of Thomas A. Knowlton, arbitrator dated May 25, 1978 previously forwarded to you.

Local Union #14

Wage	$13.25
Welfare	.75
Pension	1.35
Education	.25
Industry	.07
Total	$15.62

Pipefitters are to be hired through the referral service of Local Union #274.

Plumbers are to be hired through the referral service of Local Union #14.

A supply of fringe benefit contribution forms for making reports and payments to the funds is enclosed for your use.

All fringe benefit contributions for payroll periods prior to June 26, 1978 will be made to the old Local Union #334 Funds.

PIPEFITTERS LOCAL UNION #274

By: /s/ Lawrence H. Murphy
PLUMBERS LOCAL UNION #14

By: /s/ Thomas Brennan
MECHANICAL CONTRACTORS
ASSOCIATION OF N.J., INC.

By: /s/ [Illegible]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Civil Action No. 77-1769

UNITED ASSOCIATION, LOCAL NO. 334,
Plaintiff,

v.

UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, AFL-CIO,
Defendants.

Honorable Vincent P. Biunno

NOTICE OF MOTION—Dated December 29, 1978

TO: Richard C. Cooper, Esq.
McCARTER & ENGLISH
550 Broad Street
Newark, New Jersey 07102

Albert S. Parsonnet, Esq.
PARSONNET, PARSONNET, DUGGAN & PYKON
10 Commerce Court
Newark, New Jersey 07102

Timothy R. Hott, Esq.
FRIEDLAND & FRIEDLAND
591 Summit Avenue
Jersey City, New Jersey 07306

SIRS:

PLEASE TAKE NOTICE that on Monday, January 8, 1979 at 10:00 a.m. in the forenoon or as soon thereafter as counsel may be heard, the undersigned, attorneys for defendant [sic], shall apply, pursuant to Fed. R. Civ.

P. 56, for a summary judgment in favor of plaintiffs for the relief demanded in the complaint and amended complaint, and

PLEASE TAKE FURTHER NOTICE, that in support of this application, the undersigned shall rely upon the annexed affidavit of William Wibbelt, the pleadings and affidavits already on file in this matter, the deposition of Martin J. Ward, dated March 2, 1978 and the accompanying brief and copies of all convention minutes and constitutions from 1942 to 1976, which documents shall be handed up to the Court with these papers.

CRANER & NELSON
Attorneys for Plaintiff

By: /s/ John A. Craner
JOHN A. CRANER
A member of the Firm

Dated: December 29, 1978.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Civil Action No. 77-1769

UNITED ASSOCIATION, LOCAL NO. 334,
Plaintiff,

v.

UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, AFL-CIO,
Defendants.

Honorable Vincent P. Biunno

NOTICE OF MOTION WITH PAPERS ATTACHED—
Dated November 6, 1978

TO: John A. Craner, Esq.
Craner & Nelson
213 Summit Road
Mountainside, New Jersey 07092

Albert S. Parsonnet, Esq.
Parsonnet, Parsonnet & Duggan
10 Commerce Court
Newark, New Jersey 07102

Timothy R. Hott, Esq.
Friedland & Friedland
591 Summit Avenue
Jersey City, New Jersey 07306

SIRS:

PLEASE TAKE NOTICE that on Monday, Jan. 8, 1979, at 10:00 in the forenoon or as soon thereafter as counsel may be heard, the undersigned, attorneys for defendant, shall apply, pursuant to Fed. R. Civ. P. 56, for

a summary judgment in favor of plaintiffs [sic] for the relief demanded in the complaint and amended complaint, and

PLEASE TAKE FURTHER NOTICE that, in support of this application, the undesigned shall rely upon the annexed affidavit of William Wibbelt, the pleadings and affidavits already on file in this matter, the deposition of Martin J. Ward dated March 2, 1978, and the accompanying brief and copies of all convention minutes and constitutions from 1942 to 1976, which documents shall be handed up to the Court with these papers.

McCarter & English
Attorneys for Defendant

By: /s/ Richard C. Cooper
RICHARD C. COOPER
A member of the Firm

DATED: Nov. 6, 1978

Of Counsel for Defendant:

O'Donoghue & O'Donoghue
1912 Sunderland Place, N.W.
Washington, D.C. 20036

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Civil Action No. 77-1769

UNITED ASSOCIATION, LOCAL NO. 334,
Plaintiff,

v.

UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, AFL-CIO,
Defendants.

AFFIDAVIT OF WILLIAM WIBBELT—
Dated December 30, 1978

State of New Jersey)
) s.s.:
County of Union)

William Wibbelt, of full age, being duly sworn upon his oath according to law, deposes and says:

1. I am a former member of Local 334, United Association, Morristown, New Jersey, and also the former business manager of said local and the person most familiar with the consolidation actions taken by the United Association. I make this affidavit in support of plaintiff's motion for summary judgment and also in opposition to the defendant's motion for summary judgment and in particular the Ward affidavit.

2. Local 334, up to approximately five years ago, was a building and construction trades local with a territorial jurisdiction of most of Morris County, New Jersey. Our charter simply stated we were a building and construction trades local and no one ever told me, no less my

predecessor business manager, that our local was restricted in our trade jurisdiction in any way. By that I mean that while the members of our local specialized in the areas of plumbing and pipefitting or steamfitting, we also qualified as, and performed welding work and have also performed leadburning and sprinklerfitting work in the jurisdiction of local 334. We had not trained journeymen and apprentices to do leadburning and sprinklerfitting work as a specialty because we have basically covered this work in our general apprentice program and it is relatively easy to pick up. We did at one time have a leadburning school but disbanded it basically because the work was covered in our apprentice school.

3. Local 334 never had jurisdictional problems within the U.A. because we had U.A. jurisdiction over the plumbing and pipefitting industry in Morris County. On the other hand, we ourselves, in accordance with the U.A. constitution, did not distinguish as between "plumber" or "pipefitter" in sending men out to work. We had one out-of-work list, and sent our men out in order, not by specialization, unless a man stated he wanted to wait for a particular job, something rarely done.

4. Our apprentices were trained in both the plumbing *and* pipefitting phases of the U.A.'s jurisdiction. Only because the General Office insisted upon it did we require an apprentice to designate a particular area of specialization in his last year, but as far as we were concerned, we felt our apprentices could do all the work covered by the plumbing and pipefitting jurisdiction of the U.A. We made no issue about it because it really did not matter if an apprentice elected to be a pipefitter or a plumber. They were trained as both. In fact, we have had, to my knowledge, two journeymen who passed *both* the plumbing *and* pipefitting tests, namely, Art and Bob Warmington.

5. To point up the absurdidty in the affidavit of Mr. Ward about strict trade live distinction, and the fact of straight line locals being better able to control a better territory, stimulating competition, etc., in point of fact, every single U.A. local in New Jersey, *without exception*, permitted plumbers to work as pipefitters, pipefitters to work as plumbers, sprinklerfitters to work as pipefitters, etc. The Court must appreciate the fact that there is, a reality, very little distinction between there "specialists." What does require special ability is being a foreman, regardless of area of specialization, but no so to be a journeyman and follow orders. Thus, depending upon the economics of the situation, the men must go where the work is. If, in recent years, the so-called straight line pipefitters did not permit plumbers and sprinklerfitters to work alongside them as pipefitters, (a) there would not be enough men to man the large powerhouse or sewerage disposal type jobs, and (b) there would be mass unemployment in the so-called straight line plumbers locals. Therefore, it is nonsense to talk about a past practice (at least in New Jersey, although I strongly suspect that the same pattern exists throughout the United States) of adherence to strict trade lines. For all practical purposes, the trades, especially plumbing and pipefitting, are interchanged and the distinction is in name only. We in Local 334, and in all the other combination locals, abolished trade line distinctions long ago, just as the constitution required. We observed one trade: the plumbing and pipefitting trade, and we believed then as we believe now that we had complete jurisdiction over our entire trade. No one ever told us to the contrary. Every letter and form we got from the General Office supports this view. (See letters and forms annexed to Brief). Moreover, no U.A. convention ever stated that we were returning to the pre-1946 lines of trade demarcation. Both my predecessors and myself attended these conventions, and not a work of repudiation of the 1946

changes in unifying our trade was ever uttered. If something had been said, it would have been reported to our members. Our minutes contain no such reference.

6. As for the present consolidation itself, right now, if it were not for the fact that the pipefitter locals, 274 and 275, were putting plumbers to work, there would be a serious problem for the U.A. in New Jersey. Virtually all construction available to the U.A. in New Jersey, (and elsewhere) falls within the pipefitter sphere. Most, if not all plumbing jobs which the U.A. assigns to plumber only locals require very little man power. On the other hand, pipefitter jobs are large. For example, at the nuclear power project in Salem, New Jersey, a pipefitting job, there are large numbers of plumbers working as pipefitters. Another example of this same interchange of trades is the Bayway refinery in Elizabeth, New Jersey. I have yet to hear anyone complain about the quality of work on a job where there is a trade interchange.

As to the efficiencies of the consolidation itself, in the combined Newark-Jersey City territories, with a combined membership of 4,000, there are 23 business agents, all appointed by the General President. In contrast, in Chicago, where there is a combined membership of 15,000, there are only 17 business agents. So, it is nonsense for Mr. Ward and Mr. Coyne to talk of efficiencies, strict trade lines, etc. when the true facts are to the contrary. In areas III and IV of New Jersey, combination locals were permitted to voluntarily consolidate, but not in Areas I and II. The reason advanced is by Mr. Ward and Mr. Coyne, because of the presence of larger cities in Areas I and II. In New Brunswick, or Trenton that much smaller than Jersey City or Newark? Of course not. The simple facts is that politics (both union and employer) dictated these consolidations, not efficiency or the well-being of U.A. members.

8. Today, the biggest thing in the U.A. is welding. Both plumber and pipefitter journeymen and all apprentices learn to weld. They all go to the same school and any one of them can weld the same pipe as the other. Welding is welding. Thus, it is impossible, in the field of welding, to talk of "plumber welder" or "pipefitter welder", etc. There is no distinction whatsoever, except as between a certified or noncertified welder. I personally know that when welders are needed on jobs, it matters not that they carry any particular specialization in their books. Even metal trades journeymen weld on building and construction trades jobs.

9. With respect to the types of charters which the General President may issue, I was able to check on one such charter, that of Local 669, a so-called sprinkler-fitter local. Its original charter, issued on December 16, 1916, stated:

> Sprinkler Fitters and Helpers Union, Newark and Jersey City, Local 669A.

A second charter was issued on Decemeber 16, 1946, and stated:

> Sprinkler Fitters and Apprentices, City of Newark, County of Essex, Local 696.

A Third charter, the present one, issued by General President Ward, states:

> Building and Construction Trades, Metal Trades (Combination), Local 696.

This last charter is identical to the charter of Local 334 and is, except for the metal trades reference, identical to the charters issued new locals 14 and 274.

The inference from the change in the language of the charter of local 696 is clear: their overall trade jurisdiction must be greater and is indistinguishable from any

other local with the same charter. In fact, the charter issued Local 334 is (or was) identical to the charter issued Local 696. Moreover, it supports the view of plaintiffs herein that only three types of charters can be issued, and that the General President cannot and has not issued single trade charters. Otherwise, Local 696 would have received a sprinklerfitter charter.

10. There is nothing inconsistent between the issuance of a building and construction trades charter and the members of such a local specializing in only one phase of the overall trade jurisdiction of the U.A. Thus, the U.A. could cluster other locals in the same area to fill any trade void. But, there is a difference in the U.A. *compelling* a local to so limit its trade jurisdiction, no less under the guise of a consolidation, as is the case herein, where there is no authority under the constitution permitting it. Thus, for example, given the charter issued to Local 696, which has the same territorial jurisdiction as Locals 475 (pipefitter) and 24 (plumber) (all of these charters are identical, except for the metal trades of reference) if members of Local 696 decided to do pipefitting or plumbing work, could the U.A. stop them on the ground they have jurisdiction over Sprinklerfitting work alone? In my opinion, no.

11. Many different types of harm have occurred to the members of the plaintiff combination locals as a result of the Order of Consolidation. The loss of interchangeability, and a single referral list are paramount. If those members of former Local 334 desire to work as a plumber, and have a pipefitter book, they must now pay a fee ($5.00) since they are considered as "travellers" if they go from local 274 to local 14. Moreover, instead of working close to home, they are dispersed over a greater distance, with fewer available job opportunities. It is, therefore, not a coincidence that following the Consolidation order, many plumbers transferred over as pipefitters,

simply because of job opportunities. This lack of work also affects pension and welfare benefits, which are predicated upon hours worked.

12. In summary, while I recognize the difficulties involved in attacking the *bona fides* of the consolidation, I feel I must do so. It is not in the best interest of our members from both a work availability standpoint and from an economics viewpoint. Every efficiency (i.e., reciprocity of fringe benefit funds, etc.) could be achieved within the framework of the U.A. as it existed before the consolidation. Our effort to have a consolidated combination local, as is the case in ⅔ of the State, was totally ignored even though promptly submitted and despite representations it would be considered. Politics dictated the result.

With respect to the construction of our constitution, I contend that we are entitled to have that constitution enforced to the letter. I do not choose to allow the officers of the U.A. to "interpret" as they see fit our constitution when such interpretations are contrary to that which is plainly written. The U.A. simply chooses to ignore history because it does not suit their present political needs, and hopefully this Court will see through their scrim and enforce our constitution as it is written. If the U.A. officers desire to amend our constitution, then let them clearly and without any ambiguity go to the next convention and let the will of the members be heard. In 1946 this was done. That action, despite an occasional reference in each convention to "straight line" locals, remains unchanged. Everything the U.A. has said or done since 1946 support the view of plaintiffs that there are only three types of charters which can be issued; that there is no authority under the constitution to limit a local to a specific trade; that each charter so issued to a building and construction trades local is identical, signifying equal trade jurisdiction; and that four (4) areas of specifica-

tion for building trades journeymen are recognized and that all four areas can be under the jurisdiction of one local union. It is this constitution which preserve to the present day, which defendant U.A. has violated by disbanding the membership of combination locals along trade lines and relegating that membership into locals which are compelled to limit their trade jurisdiction to one phase of the overall building and construction trade and which plaintiffs contend is illegal and which this Court should set aside.

/s/ William Wibbelt
WILLIAM WIBBELT

Sworn to and subscribed before me this 30 day of December, 1978

/s/ John A. Craner
JOHN A. CRANER
An Attorney At Law of New Jersey

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Civil Action No. 77-1769

UNITED ASSOCIATION, LOCAL NO. 334,
Plaintiff,

v.

UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, AFL-CIO,
Defendants.

AFFIDAVIT OF WILLIAM WIBBELT—
Dated March 19, 1979

STATE OF NEW JERSEY:)
) SS
COUNTY OF UNION:)

WLLIAM WIBBELT, being duly sworn upon his oath, deposes and says:

1. I am the former Business Manager of Local 334, United Association and make this affidavit in support of the supplemental Brief filed by our attorney in support of our motion for Summary Judgment and in opposition to the motion for Summary Judgment brought by the United Association and new Locals 274 and 14.

2. My attention has been called to that portion of the Reply Brief of the United Association wherein reference is made to Section 2 of the Constitution, and the contention that this Section is the source of the United Association's power to determine the trade jurisdiction of its local unions. This is incorrect. Section 2 is merely a reiteration of the grant of jurisdiction to the United Association from the AFL-CIO. In effect, the United

Association is the designated labor organization in the plumbing and pipe fitting field and, in Section 2 of the United Association Constitution the A.F.L.-C.I.O. is saying that the United Association can charter local unions within its alloted jurisdiction, referring to the grant of power into the United Association. This section does not in any way deal with the chartering of local unions. Moreover, the grant of power in Section 2 must be considered in conjunction with the other sections of the Constitution dealing with chartering. Section 2 does not give the President or the Executive Board the right to determine that a particular local is only going to be a plumber local. Its plain meaning is that whatever grant of authority the United Association gives to its local unions, as outlined in its Constitution, that is the maximum jurisdiction, both trade and territorily, that these locals can assert or claim.

3. When I became a member of the United Association, and when the other members of Local 334 joined and became members of the United Association, it was always our understanding of the Constitution that lines of trade demarcation were abolished and that journeymen could work at any branch of the trade for which they were qualified. Ever since I have been a member of the United Association, and regardless of the form of any particular local union, there has always been an interchange as between plumbers and pipe-fitters. No one has ever said that a plumber is not qualified or not permitted to work as a pipe-fitter, nor that a pipe-fitter was not qualified or not permitted to work as a plumber. In every New Jersey combination local, the business agents made sure that all of the journeymen and apprentices could perform all work within the trade jurisdiction of the United Association. I know this from discussions held at pipe trades meetings and also when the question of consolidation was raised initially. In fact, interchange of trade jurisdiction was a primary reason why we ad-

vocated consolidation of combination locals, which I have referred to in my earlier affidavits. No member of a combination local who I am aware of was unqualified to work at any type of pipe-fitting or plumbing job. Most, if not all, apprentices in recent years as well as many existing journeymen qualified at welding were thus able to work interchangeably as plumbers and pipe-fitters. Apprentices learned lead burning and sprinkler fitting work as part of their apprenticeship. Our collective bargaining agreements were negotiated for both trades and did not distinguish as between plumber and pipe-fitter. Both received the same rate of pay and the same benefits. We negotiated with mechanical contractors for a unified contract.

4. No one connected with the United Association ever advised any of the members of New Jersey locals, no less myself, at any time when I was a member and officer of Local 334, that the United Association had, in fact, amended its constitution so as to create trade line jurisdiction demarcation whereby plumbers could do only plumbing work and pipe-fitters could do only pipe-fitting work, etc. The only difference between Local 334 and Locals 12 and 274 was that those two locals were dividing up the piping trade along trade jurisdictional lines as between themselves under a trade line agreement which had existed for over 50 years, whereas we, following the Constitution, had no such division. Ever since I have been a member of the United Association I have never seen any difference in the charters issued to either of these three locals. In fact, every charter for every construction local is the same throughout the United Association. The point is that the United Association has, despite its constitution, and the form of the charters it has issued (building and construction trade locals) permitted single purpose locals to continue to exist, as such, something I personally had no control over.

5. The absolute and uncontradicted fact is that all members of Area I and II locals worked at *all phases* of the plumbing and pipe-fitting trade. This, to me, is proof that lines of demarcation are wholly imaginary and pose no barrier to a unified trade. If, in fact, there were lines of trade demarcation, no one from the United Association ever wrote us a letter stating that fact and no one ever told us that we were to operate our locals along such restricted trade lines. We all knew about specialization and we were told that apprentices had to elect an area of specialization upon completion of their apprenticeship. We really did not care about this in Local 334 because it really didn't matter what a member's area of specialization was since all our members could work interchangeably and, in fact, were referred out on a single integrated work list.

6. For the United Association to now say that the conventions of 1956 through 1976 changed the trade jurisdiction from that which had existed in 1946 through 1956 is a total misrepresentation. We have received numerous communications from the General Office over the years dealing with the issue of trade distinction, some of which are attached to my prior affidavits, but there is not one single document I have ever seen which says that strict craft line segregation exists in the United Association. In fact, just the opposite was stated, leading us to believe that trade distinctions were a thing of the past. I am sure that had the U.A. really believed that the return of strict lines of trade demarcation had occurred, it certainly would have advised us in writing.

7. This is not to say that local unions assigned a particular territory cannot voluntarily agree to divide up the work in their territory along trade lines and enter into a contract defining the distinction along those lines. But, it is a far cry for the United Association to claim the right to charter locals in such a manner and to impress

an agreement upon them saying that the local can only do a certain portion of the work falling within the overall jurisdiction of the United Association with the balance belonging to the other local. Our Constitution simply does not allow for it, and has not allowed for it since 1946. Previously, the Constitution did allow the United Association to require locals sharing a common territory to enter into trade line agreements and all of the present agreements in New Jersey relate back to that time. The U.A. Constitution is devoid of any language relating to such trade line agreements, and, it is impossible, therefore, for the U.A. to contend it can force or compel locals to refrain from seeking work outside a limited trade scope. Yet, this is exactly what is being done under the present Orders of Consolidation.

8. The effect of this misrepresentation which we now find ourselves faced with, namely, that the United Association can charter locals along single trade lines and that our members, who thought that when they joined the Morristown local they would be able to work here interchangeably, now find themselves faced with an entirely different set of facts, which facts are totally repugnant to the purposes and concepts of the United Association. As the various convention minutes make clear, the purpose in eliminating trade demarcation was to eliminate internal jurisdictional fights. We all recognized that it was not in our best interest for plumbers to fight with the pipe-fitters over a particular piece of work. This is why locals such as 334 never had these jurisdictional problems because we never distinguished among our members as to who was a plumber and who was a pipefitter. This is why our members throughout the country will never agree to return to the old ways, and why the officers of the U.A. have been unable to change the constitution at convention to authorize "straight-line" locals. Thus, to now argue for repudiation of these changes made since 1946 is an insult to the delegates

who attended those convention, including myself. Moreover, not once has the U.A. ever mentioned, either at convention or in correspondence to our local (or any other local) that that which was achieved in 1946 had been repudiated. As far as we were concerned, single purpose locals were a dead issue. Of course, while we knew that pre-existing single purpose locals still continued to exist, we assumed that because of their pre-existence they would continue to function, although I never could understand why those shared territories were never consolidated, especially in light of the continued jurisdictional problems they generated. Obviously, politics and jobs control the situation.

9. Loss of job opportunities to our members as a result of the disputed Order of Consolidation is an important issue. At the June 26, 1978 hearing, counsel for the U.A., addressing himself to this issue, stated:

> "Okay, what is the harm being done here? None. Again, as I've informed Your Honor, former members of 334 will be allowed to register for employment on either the 14 list, the 274 list or both. They will therefore not be losing anything. They can be referred out as a plumber and pipefitter".

Our former members, who desire to work as both plumber or pipefitter must physically pick up a travel card (cost $5.00) and physically deposit that travel card in the Local Union they are seeking work in (plumber or pipefitter) but are not members of.

Therefore, contrary to what Mr. Matosoff stated above, our members are *not* given the free access to all the jobs they previously had available to them. By the United Association representing to this Court that this interchange can be permitted is recognition, in effect, of the *proven capability* of these members to work at all phases of the trade and thereby an admission that the Building and Construction Trades Local is the *only* form of local

union which can truly assure our members of their *previous job opportunities* and be consistent with our constitution.

Moreover, the statement above made on behalf of the U.A. would appear to be contrary to the very argument the U.A. makes in this case for segregation of trades. Thus, one must seriously question the *bona fides* of the U.A. in acting as they have. It would appear, therefore, that the single trade concept is not only illegal, but also totally unwieldy to a large membership which has always accepted interchangeability of trades. Of course, men qualified at more than one aspect of the overall U.A. trade jurisdiction suffer by being shunted into a single purpose local. For them to try and work at both trades (plumbing and pipefitting) under these conditions becomes an "impossible dream". Yet, such members never knew any other way.

10. Another important aspect of this case lies in the area of our pension and welfare funds. When we established these funds, it was on the basis that our members, being referred to work on one master list, would reach certain uniform minimum levels of employment, and tailored our plans accordingly. The loss of plaintiff locals has resulted in the destruction, for all practical purposes, of these plans and relegation of the members into inferior programs, conditioned upon their abilities, to secure work under limited circumstances, despite assurances by the U.A. in the Order of Consolidation that these Funds would not be adversely affected. Obviously, this has not been the case. The following are some comparisons which have resulted from the loss of these Funds.

WELFARE FUND

	ELIGIBILITY	COVERAGE
Local 334	13 weeks—$.65 per hour contribution. Coverage for 1 year if no further contributions made. All members covered. No self-pay feature.	BC-BS and Major Medical; Accident and sickness ($75 per week for 26 weeks); AD&D ($10,000-double indemnity); *Retirees covered* under AD&D
Local 274	12 weeks—$1 per hour contribution. Required to have 350 hours per quarter to remain eligible. Can self-pay to keep coverage. Payments must be made within 14 days of notice.	Union Labor Life Ins. Co. (Lower payment schedule than L. 334); AD&D $5,000-double indemnity); *no retirees covered* for AD&D; dental coverage after 18 months of employer contributions for active members.
Local 334	Essentially the same as Local 274 exists. It requires 900 hours of contributions for initial coverage.	No former 334 members are covered. A copy of the Plan has not been made available, despite repeated requests for same.

PENSION FUND

Local 334

Annuity purchased through Prudential Ins. Co. guaranteed payments for 10 years.

Local 274

Pension is self-administered, guaranteed payments for 5 years.

Local 14

Same as Local 274.

11. The result of the Orders of Consolidation have, therefore, resulted in:

a) Loss of half the previous job opportunities we had under Local 334, and loss of a larger dollar volume of jobs because of more men, formerly out of work in other areas taking over these jobs.

b) Loss of jurisdiction.

c) Loss of our assets, pension and welfare funds and better benefits and regulation to lower benefits.

d) Loss of identity.

12. It is quite clear to me, and to my former members that this entire scheme was orchestrated by the former business agent of Local 274. The minutes of the January 6, 1977 State Pipe-Trades Meeting reveal that Mr. McNulty, together with International Representative Coyne had drawn up the plan of consolidation, which plan was, despite virtually unanimous objection, and despite other proposals, adopted without change by President Ward. As the U.A. has oft stated, it is simply a matter of politics.

13. If we are forced to accept membership in "straight-line" single trade local unions, there is *no* possible way all our former combination local union members can or will enjoy the benefits and job opportunities we previously enjoyed as members of a building and construction trades (combination) local. It makes no sense to our members that the U.A. has consolidated combination locals in Areas III and IV, but refused to do it in areas I and II. What the U.A. has done is to "merge" members and not locals in Areas I and II. We feel that, in this respect, we have been badly misrepresented and misinformed by our national leaders. We feel most strongly that they should not profit from such misrepresentations under the guise of "interpretation" of our constitution.

/s/ William F. Wibbelt, Jr.
WILLIAM F. WIBBELT, JR.

Sworn to by and before me this 19th day of March, 1979.

/s/ Anne Hunter
NOTARY PUBLIC
NOTARY PUBLIC OF NEW JERSEY

My Commission Expires Sept. 8, 1979

[ORDER OF THE SUPREME COURT OF THE UNITED STATES—Filed January 26, 1981]

80-710

UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, AFL-CIO, *et al.*

v.

LOCAL 334, UNITED ASSOCIATION, *et al.*

The petition for writ of certiorari is granted.

80-710

No.

Supreme Court, U. S.
FILED
DEC 12 1980
MICHAEL RODAK, JR., CLE

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE-FITTING INDUSTRY OF THE UNITED STATES AND CANADA, AFL-CIO, *et al.*,

Petitioners,

vs.

LOCAL 334, UNITED ASSOCIATION, etc., *et al.*,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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Question Presented

The Court of Appeals held that the District Court had no jurisdiction under Section 301(a) of the Labor Management Relations Act of 1947 because the instant case involved solely intra-union issues. Therefore, the question presented is whether Section 301(a) of the Labor Management Relations Act of 1947 grants jurisdiction to the United States District Courts in cases which involve solely intra-union issues.

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No.

IN THE

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UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, AFL-CIO, *et al.*,

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vs.

LOCAL 334, UNITED ASSOCIATION, etc., *et al.*,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Counter-Statement of the Case

Local 334, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industries of the United States and Canada (herein "Local 334"), a labor organization representing employees for over seventy years, is affiliated with the United Association of Journey-

men and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada (herein "United Association" or "Petitioner"), the parent international union. In August of 1977 the United Association issued an Order of Consolidation which affected nine locals affiliated with the United Association. The nine local unions were consolidated into three local unions.

On or about August 23, 1977, Local 334 filed an action in the Superior Court of New Jersey seeking to enjoin the United Association from removing Local 334's charter and seal and to order the United Associaiton to hold a full and fair hearing on Local 334's appeal from the August, 1977 Order of the United Association. Local 334 then filed an Amended Complaint requesting the court to enjoin the United Association from enforcing its Order of Consolidation. The matter was subsequently removed to the United States District Court for the District of New Jersey. In the United States District Court, Local 334 obtained a Temporary Restraining Order enjoining the enforcement of the Order of Consolidation. Subsequently, the court denied Local 334's request for a preliminary injunction. In November, 1977 and May, 1978 the United Association issued supplemental Orders of Consolidation.

The merits of the case were submitted to the District Court on cross-motions for summary judgment. Local 334 took the position that the United Association did not possess the authority, under the union constitution, to order the consolidation. In contrast, the United Association asserted that the union constitution expressly authorized it to order consolidations. The motion of Local 334 was joined in by all of the plaintiffs and, similarly, the United Association's motion was joined in by the remaining defendants.

In a letter opinion dated August 17, 1979, the District Court dismissed plaintiffs' complaint for lack of jurisdiction for failure to exhaust available administrative remedies. The court also held that, if it did have jurisdiction, summary judgment should be granted in favor of the defendants (See, P. App. 20a to 30a). An appropriate Order was entered on the same date. Local 334's Notice of Appeal was timely filed.

Prior to oral argument before the Court of Appeals for the Third Circuit, the court requested that the parties submit appropriate legal memoranda on the issue of subject matter jurisdiction under Section 301(a) of the Labor Management Relations Act of 1947. The jurisdictional issue was the sole subject of the oral argument. The Court of Appeals issued its decision on August 4, 1980, vacating the judgment of the District Court and remanding to the District Court. The District Court was ordered to remand the case to the State court (P. App. 19a).

The Court of Appeals based its decision on its finding that the dispute raised "solely intra-union issues" (P. App. 18a). The court held that the challenged consolidation "would not have a significant impact on labor-management relations or industrial peace" (P. App. 18a). The court thus rejected the contention of the United Association that, during the course of the lawsuit, Local 334 had alleged that its dispute with the United Association involved more than a mere intra-union conflict over the interpretation of the union constitution.

POINT I

The Courts of Appeals uniformly have held that jurisdiction is not present under Section 301(a) of the Labor Management Relations Act of 1947 in an internal union dispute which has no effect on labor-management relations.

There is no legal or factual issue present in the matter *sub judice* which deserves or requires this Court's attention. It has been universally recognized by the numerous courts which have discussed the issue of jurisdiction under Section 301(a) of the Labor Management Relations Act of 1947 (herein "Section 301(a)") that the statutory provision was not intended to result in the injection of the federal judiciary into intra-union disputes which have no impact or effect upon labor-management relations. As such, there is no significant federal question which this Court must decide. The federal courts at all levels have consistently and wisely rejected arguments, such as those made by petitioners, which would result in their becoming the managers, monitors, and arbitrators of purely intra-union disputes. The applicable decisional precedent is illustrative.

In *1119 D.C., National Union of Hospital and Health Care Employees* v. *National Union of Hospital and Health Care Employees,* 533 F.2d 1205 (D.C. Cir. 1976), the court held that a dispute between a local union and its parent, over the validity of a merger, in which there were no "concrete allegations of actual threats to industrial peace" was purely an intra-union dispute which did not provide a basis for the assertion of Section 301(a) jurisdiction. In similar fashion, the Tenth Circuit in *Smith* v. *United Mine Workers,* 493 F.2d 1241 (10th Cir. 1974) held that Section 301(a) jurisdiction was not present when the

> "controversy relates only to the construction and application of the union constitution and has nothing to do with labor-management relations."

Id. at 1243. The court's decision was based upon the governing congressional policy:

> "If Congress intended to turn over to the federal courts the control and supervision of internal union affairs which have no external application to industrial peace or to collective bargaining agreements, we believe that Congress would have said so explicitly. We agree with the Ninth Circuit that it was not the intent of the Congress for the courts to use the LMRA to police intra-union problems. Hotel & Restaurant Employees Local 400 v. Svacek, 9 Cir., 431 F.2d 705, 706."

Id. at 1243.

Similarly, in *Local Union No. 657, United Brotherhood of Carpenters and Joiners* v. *Sidell,* 552 F.2d 1250 (7th Cir. 1977), cert. denied, 434 U.S. 862 (1977), it was noted that a federal court should be "chary" of becoming involved in "purely internal union disputes." *Id.* at 1254. The court held that it had Section 301(a) jurisdiction solely because there was a substantiated allegation that the dispute affected the labor-management relationship and was not a "mere intra-union organizational change." *Id.* at 1255. In *Stelling* v. *International Brotherhood of Electrical Workers,* 57 F.2d 1379 (9th Cir. 1978), cert. denied, 442 U.S. 944 (1979) the court acted consistently and predictably. It held that an intra-union controversy does not provide a basis for Section 301(a) jurisdiction if it does not affect "external labor relations." *Id.* at 1384. In addition, and most recently, the Fifth Circuit ruled that a controversy over the interpretation of a union constitution must have a significant impact upon the relationship between labor and manage-

ment in order for Section 301(a) to be properly asserted. See, *Alexander* v. *International Union of Operating Engineers,* 624 F.2d 1235 (5th Cir. 1980).

The foregoing discussion demonstrates beyond peradventure that the Courts of Appeals have recognized the clear Congressional policy and prohibition against becoming interjected into the huge arena of internal union disputes which have no impact on labor-management relations As this Court noted in *Retail Clerks* v. *Lion Dry Goods,* 369 U.S. 17 (1962), Section 301(a) jurisdiction is appropriate where a lawsuit is based on a contract which is "significant to the maintenance of labor peace." *Id.* at 28. The consistency with which all of the courts which have addressed the issue have ruled, compels the conclusion that there is no significant federal question which this Court must decide. The Congressional policy is manifest. It has been properly and uniformly applied and does not warrant this Court's time or attention.

Petitioners assert that there is a division among certain Courts of Appeals as to whether a union constitution is a "contract" within the meaning of Section 301(a). The Court of Appeals expressly and unequivocally stated that it did not decide that issue[1] and, similarly, this Court need not address that issue. Simply stated, once the Court of Appeals found that this case presented only an intra-union dispute, it was unnecessary to decide whether the union constitution is a "contract" within the meaning of Section 301(a).[2]

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[1] See P. App 11a n.13.

[2] The petitioners' assertion that a decision should have been made by the Third Circuit as to the meaning of the term "contract", as a practical matter, must be rejected. If the court had held that a union constitution *was not* a contract, Section 301(a) jurisdiction would not have been present. If it had held that the constitution *was* a contract, it would have examined whether the dispute affected labor-management relations and held, as it did without deciding the "contract" issue, that Section 301(a) jurisdiction was lacking on that basis.

POINT II

Consistent with the decisions of other Courts of Appeals, the Third Circuit Court of Appeals properly held that the facts did not support a finding of a significant impact on labor-management relations.

The petitioners' attempt to argue that the Court of Appeals did not act in a manner consistent with the decisions in *Local 1219, United Brotherhood of Carpenters* v. *United Brotherhood of Carpenters,* 493 F.2d 93 (1st Cir. 1974), and *Local 657, supra,* when it held that the facts and allegations in the present case did not support on labor-management relations. P.b. 12 to 14. More specifically, petitoners assert that the allegation, contained in Local 334's original complaint, stating that the Orders of Consolidation would affect the union referral lists and Local 334's contention, that the Orders of Consolidation would terminate Local 334's collective bargaining agreements, require a finding under *Local 1219 and Local 657* that Section 301 (a) jurisdiction is present. The petitioners' contention must be rejected.

The petitioners note that during the course of the proceedings before the District Court, Local 334 asserted that the Orders of Consolidation would reduce the work opportunities of its membership by requiring separate referral lists for the plumbers and pipefitters. Prior to the Orders of Consolidation, members of Local 334 had been placed on a single referral list and performed both plumbing and pipefitting duties. All of the allegations made by Local 334, referring to the reduction of work opportunities, specify harm solely to the referral lists which would be utilized under the Orders of Consolidation *by the local unions in* sending union members to particular jobs. The referral lists constitute nothing more than an internal

union device through which work opportunities are assigned. Employers have no input as to the manner in which the referral lists are comprised or administered. Such responsibilities rest solely within the authority of the unions.

The petitioners assert that the referral procedure "would not exist but for an employer-union agreement." P.b. 14. That does not persuade. Pursuant to collective bargaining agreements, a local union may agree to supply an employer with workers. However, the manner in which such referrals are made is solely within the discretion of the union. More importantly, the petitioners' contention must be rejected because it does not identify any allegation, substantiated or otherwise, which indicates that the labor-management relations between Local 334 and an employer would be or has been affected by the change in the system of referral. This is precisely because there has been no such effect. All of the Local 334 allegations and statements relating to a reduction in work opportunities claim injury only to the members of Local 334. In none of those statements or allegations is it asserted that the injury suffered by the members would transform itself into a strike, job action, a possible strike or job action, or any other activity which would impact upon the relationship between labor and management.

The petitioners rely upon Local *1219, supra,* for the proposition that an adverse effect upon referrals will provide a sufficient basis for the assertion of Section 301(a) subject-matter jurisdiction. The petitioners err. The court in *Local 1219, supra,* was never faced with the issue of what showing of impact was necessary in order to provide a basis for Section 301 subject-matter jurisdiction. The court merely made an inquiry as to whether the local union and parent union had ever entered into a "contract"

which covered the subject-matter of the dispute. The court, without ever mentioning the issue of impact, concluded that the parties did not have a contractual agreement and dismissed the action. *Id.* As such *Local 1219, supra,* does not provide support for the petitioners' contentions.

It is next asserted by the petitioners that the allegation made by Local 334, that its collective bargaining agreements would be terminated by the consolidation orders, somehow demonstrates impact upon labor-management relations. Although collective bargaining agreements were terminated under the Orders of Consolidation, no impact on labor-management relations was alleged nor did any impact result. As the Court of Appeals correctly noted, the Orders of Consolidation specifically provided that:

> "All contractual obligations of Local 334, including existing collective bargaining agreements, were to be assumed and carried out by Local 14 and 274" (emphasis added). P.App. 16a.

Clearly, although termination of the agreements did occur, there was no impact on labor-management relations. The covenants and conditions set forth in the agreements were properly carried out pursuant to the Orders of Consolidation. Petitioners' reliance on *Local 657,* is misplaced. Importantly, there was an allegation in *Local 657, supra,* which asserted that the contract termination would cause "immeasurable harm and interference" with the relationship between the local and the employers. In the present case, no such allegation has ever been made because the Orders of Consolidation, as described above, specifically required that the terms of all collective bargaining agreements to which Local 334 was a party be assumed and carried out by Locals 274 and 14.

It is undeniable that the Court of Appeals, consistent with all of the applicable decisional precedent, properly held that there were no allegations made or facts proffered which supported the petitioners' contention that the Orders of Consolidation affected labor-management relations. As such, there is no issue extant which this Court need decide.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari must be denied.

Respectfully submitted,

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No. 80-710

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, AFL-CIO, *et al.*,
Petitioners,

v.

LOCAL 334, UNITED ASSOCIATION ETC., *et al.*,
Respondents

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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PETITIONERS' REPLY MEMORANDUM

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PETITIONERS' REPLY MEMORANDUM

A. Respondent would sweep the chessmen off the board by restating the Question Presented to be whether § 301(a) of the LMRA "grants jurisdiction to the United States District Courts in cases which involve solely intra-union issues." (Br. Opp. i.)[1] That reformulation begs one of the disputed issues, which is whether the Court

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[1] "Br. Opp." refers to the Brief in Opposition to the Petition for Certiorari. "Pet." refers to the Petition for Certiorari.

of Appeals properly so characterized the allegations of the complaint (Pet. 18a) for purposes of § 301 jurisdiction; in this respect the Court of Appeals' decision conflicts with those of the First and Seventh Circuits discussed at Pet. 12-14. See also point C, *infra*, pp. 2-5. And even respondent's version of the question presented merits review under this Court's Rule 17 because, under the decisions of the Second, Fourth and Sixth Circuits quoted at Pet. 7-9, there is § 301 jurisdiction over suits between a local and International union for breach of the International's constitution without regard to whether the underlying dispute has any impact on labor-management relations.

B. These decisions, which the respondent perforce ignores, also refute its first point, that "The Courts of Appeals uniformly have held that jurisdiction is not present under Section 301(a) of the Labor Management Relations Act of 1947 in an union dispute which has no effect on labor-management relations." (Br. Opp. 4.) As Judge Friendly said in one of those cases, "On its face, this language [of § 301(a)] constituted a clear predicate for jurisdiction at the time the complaint was brought to enforce the relevant provisions of the NALC Constitution." [2]

C. Respondent's second point is, "Consistent with the decisions of other Courts of Appeals, the Third Circuit Court of Appeals properly held that the facts did not support a finding of a significant impact on labor-management relations." But the decision below is *not* consistent with that of the First Circuit in *Local 1219, etc.*[3] or that of the Seventh Circuit in *Local Union No.*

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[2] *National Association of Letter Carriers* v. *Sombrotto*, 449 F.2d 915 (2nd Cir. 1971), more fully quoted at Pet. 8.

[3] *Local Union 1219, United Brotherhood of Carpenters and Joiners* v. *United Brotherhood of Carpenters and Joiners*, 493 F.2d 93 (1st Cir. 1974).

657, etc.[4] The heart of the matter is that when it determined that "this suit raise[es] solely intra-union issues" (Pet. 18), the court gave that standard a wholly artificial meaning—one quite different from that of the First and Seventh Circuits when they found § 301 jurisdiction over actions which are indistinguishable from the present. (See Pet. 12-14.) The *Local 1219* and *Local 657* actions were challenges under an international union constitution to the restructuring of local union jurisdiction, which changed the identity of the unions which negotiated and contracted with the employers, and which allegedly affected the employment opportunities of the plaintiff local's members. In arguing that the decision below does not conflict with those decisions, respondent misreads them.

Respondents' description of *Local Union 1219, etc.* (Br. Opp. 8-9) simply disregards Judge Aldrich's discussion of the issue of jurisdiction under § 301, 493 F.2d at 95-96, much of which is quoted at Pet. 12-13, n.2. The First Circuit's ultimate conclusion that the contract (that is, the International constitution) did not support the plaintiff's claim resulted in dismissal of the complaint on the *merits*; but before reaching the merits he properly inquired whether there was federal jurisdiction, and determined that there was. That is precisely the course followed by the District Court in the instant case, and which should have been sustained by the Court of Appeals.[5]

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[4] *Local Union No. 657, United Brotherhood of Carpenters and Joiners* v. *Sidell*, 552 F.2d 1250 (7th Cir.), *cert. denied*, 434 U.S. 862 (1977).

[5] Since the First Circuit *did* decide the issue of § 301 jurisdiction, respondent's statement that the Court ruled "without ever mentioning the issue of impact", is self-defeating. For, if the *Local 1219* opinion, which clearly holds that a union constitution is a "contract" for purposes of § 301, is read as not requiring a showing

Respondent's attempt to distinguish the Seventh Circuit's decision in *Local 657* on the ground that the complaint there alleged " 'immeasurable harm and interference' with the relationship between the local and the employers" (Br. Op. 9) wrests a single phrase out of the following passage in the Court's opinion:

> However, in the present case, plaintiff does possess a charter and has posited a similar employer dilemma. In its complaint, plaintiff alleged:
>
> > "[t]hat the plaintiff Local has been in existence over seventy-five years and has established stable and harmonious working relationships through contracts with contractors of Sheboygan County, Wisconsin and that to cause the plaintiff Local to be governed by contracts formulated and promulgated by the Fox River Valley District Council as mandatory upon plaintiff Local would cause immeasurable harm and interference with its present relationship and contracts with its employers."
>
> Thus here we have an allegation affecting the local's relationship with employers, rather than the mere intra-union organizational change involved in *1199 D.C.*[6]

---

of impact, then the First Circuit's approach to § 301 is to be aligned with that of the Second, Fourth and Sixth decisions and would conflict with the decision below for that reason. Although this would be a permissible reading, *Local 1219* may also be read as holding only that § 301 jurisdiction lies where the suit is not purely over internal affairs, and that Local 1219's suit qualified under that standard. Rather than risk overstating the First Circuit's holding, the Petition chose the narrower of those interpretations. But it really does not matter which interpretation is correct, since on either view the First Circuit's decision is in clear conflict with that of the Third Circuit in this case.

[6] 552 F.2d at 1255. *"1199 D.C."* refers to the decision of the District of Columbia Circuit described at Pet. 10.

Here, as in *Local 657*, "we have an allegation affecting the local's relationship with employers", since by virtue of the International's challenged consolidation order the two successor locals, rather than the original nine locals, will negotiate and contract with the employers. And, while respondent now strains to downplay its own complaint (Br. Opp. 8, 9) it there alleged, *inter alia*, that:

> "* * * each member of plaintiff will have to compete * * * with a large group of journeymen and will lose the advantage of their present positions on the out of work list of plaintiff. Therefore, there will be immediate and irreparable injury to the property rights of the members of plaintiff unless defendant is restrained and enjoined from disbanding Local 334 and enforcing the Order of Consolidation." [7]

---

[7] Amended Complaint, ¶ 28, quoted more fully at Pet. 4.

CONCLUSION

In sum, while the decision of the Court below—that there is no § 301 jurisdiction over this action—is in accord with the decision of some other Courts of Appeals (see Pet. 9-10), it cannot be reconciled with those of the First, Second, Fourth, Sixth and Seventh Circuits. The conflict should be resolved here and now, particularly since, as respondent does not deny, the jurisdictional issue, however phrased, is important and recurring.

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OCTOBER TERM, 1980

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On Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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BRIEF FOR PETITIONERS

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QUESTION PRESENTED

Does Section 301 of the Labor Management Relations Act of 1947 grant jurisdiction to the federal district courts over a suit by a local union against the national union with which it is affiliated, alleging that the latter violated its national Constitution by consolidating local unions which represent employees in collective bargaining with employers and which operate employee referral systems?*

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* In addition to the United Association and Local 334, the other parties to the proceedings below were United Association Locals 49, 523, 124, 84, 14 and 274.

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---

BRIEF FOR PETITIONERS

OPINIONS BELOW

The opinion of the Court of Appeals is reported at 628 F.2d 812. It is reproduced at pp. 1a to 19a of the Petition for Certiorari (hereafter referred to as "Pet.").

The opinion of the District Court was in the form of a Letter Opinion dated August 17, 1979 and is unreported. It is reproduced at Pet. pp. 20a to 28a.

JURISDICTION

The judgment (Pet. pp. 29a-30a) of the Court of Appeals was entered on August 4, 1980. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTE INVOLVED

Section 301(a) of the Labor-Management Relations Act of 1947 (hereafter "LMRA" or "the Act"), 61 Stat. 136 *et seq.*, 29 U.S.C. § 185(a), provides as follows:

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in the Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

STATEMENT OF THE CASE

A. The Circumstances of the Controversy Between the Parties

Petitioner United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO (the "United Association" or "U.A.") is a labor organization representing employees engaged in interstate commerce, primarily in the plumbing and pipefitting construction industry. At the present time, there are approximately 530 local unions affiliated with and chartered by the United Association. The terms of the relationship between the United Association and each of its local unions, including their respective authorities, are established and governed by the United Association's Constitution, a document adopted and amended by action of the elected local union dele-

gates to the United Association's regular conventions, held every five years (J.A. 24, 26).[1]

Prior to 1977, twenty-seven local unions affiliated with the United Association were located in the State of New Jersey, including Respondent Local 334 of Morristown. Each local negotiated and administered its own collective bargaining agreements with industry employers. (See Affidavit of Martin J. Ward dated September 9, 1977, para. 16, J.A. 81-82). Believing that the continued existence of so many local unions in the state was unjustified and harmful to the interests of the membership, the United Association had urged the locals to agree upon voluntary consolidation plans. When no satisfactory plans could be agreed upon, the United Association International Representative assigned to the State of New Jersey proposed his own plan for consolidation to the United Association's General President. Insofar as is relevant to this case, the plan called for the consolidation of nine local unions, including Respondent Local 334, into two surviving locals, one representing plumbers (Local 14) and the other representing pipefitters (Local 274). Each local union that would be affected by this proposed plan, including Local 334, was given the opportunity to present its position on the plan at a hearing conducted by a duly appointed union hearing officer on May 10, 1977.[2] Thereafter, the Hearing Officer submitted his report and recommendations to the United Association's General President (Exhibit B to the Complaint, J.A. 27). Concluding that the proposed plan of consolidation would increase employment opportunities for members, protect fringe benefit

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[1] "J.A." refers to the Joint Appendix in this Court.

[2] The hearing was held even though it was not required by the United Association Constitution. Despite their common surname, the Hearing Officer who conducted the hearing, Philip S. Coyne, is no relation of the International Representative who proposed the plan of consolidation, Francis J. Coyne.

rights of members, improve operating efficiency and assist in combating non-union conditions, the Hearing Officer recommended that the proposed plan be adopted (J.A. 36-38).

The Hearing Officer's recommendations were adopted by the United Association's General President, Martin J. Ward, who, on August 4, 1977, issued an Order of Consolidation, effective August 15, which directed the nine northern New Jersey locals, including Respondent Local 334, to consolidate in accordance with that plan (Exhibit C to the complaint, J.A. 41). The Order was issued pursuant to Section 86 of the Constitution, which vests the United Association with the power to order local unions to consolidate in "one or more" locals when there is a superfluous number of locals in any locality and when, in the judgment of the United Association's General President, consolidation would be in the "best interest of the United Association, locally or at large" (J.A. 25). As required by Section 86, the Order of Consolidation was duly approved by the United Association's General Executive Board (J.A. 85-86).

B. The Proceedings Below

1. The Complaint and Amended Complaint

On August 22, 1977, Local 334 filed an action against the United Association in the Superior Court of New Jersey, Chancery Division, Morris County, seeking to enjoin enforcement of the Order of Consolidation. The complaint alleged that the "relationship as between plaintiff and defendant is governed by a constitution" (i.e., the United Association Constitution) (complaint, para. 3, J.A. 19); and that in directing the consolidation of Local 334's plumber members into one local (Local 14) and its pipefitter members into another local (Local 274),

the United Association had violated its Constitution (*id.*, para. 11, J.A. 21). The relief sought in the complaint was an order enjoining implementation of the consolidation until such time as Local 334 had been permitted an appeal hearing before the United Association's General Executive Board (complaint, para. 14, J.A. 21).

Shortly after filing its original complaint, Local 334 filed an amended complaint, which sought not merely to enjoin further implementation of the Order of Consolidation, but to set aside the Order, as well. Like the original complaint, the amended complaint recited that the "relationship (rights and duties) between Local 334 and the [United Association]" was governed by the Constitution, and that the Order of Consolidation violated the Constitution (amended complaint, para. 3, 23, J.A. 55, 59). The amended complaint further alleged that Local 334 had "contractual relations with the Mechanical Contractors Association and numerous independent piping and plumbing firms doing business on [sic] the Morris County area . . ." (*id.*, para. 9, J.A. 56) and that it "operate[d] a hiring hall whereby employers in need of journeymen and apprentices will contact plaintiff which in turn will refer such employees to work" (*id.*, para. 10, J.A. 56). Such referrals were made "from a unified referral list, regardless of whether the job requires a plumber or pipefitter, and regardless of the membership designation of each such member" (*id.*, para. 11, J.A. 56). The effects upon the Local's contractual relations with employers and upon its referral system allegedly resulting from the United Association's action in ordering the consolidation were described at paragraphs 26-28 of the amended complaint:

> 26. At the present time plaintiffs have the exclusive contractual jurisdiction for all plumbing, pipefitting, metal trades and refrigeration work in Morris

County, New Jersey. As such, plaintiff refers out its membership without distinction as to whether they bear a plumber membership card or a pipefitter membership card.

27. The present Order of Consolidation, unless stayed pending this litigation will result in deprivation of work opportunities for each member of plaintiff in that such members will thereafter be required to work under separate local unions which are divided along craft lines and therefore under separate referral lists as either a plumber or a pipefitter with no opportunity to interchange as is presently the case.

28. It is impossible to calculate the financial loss, therefore, to each member of plaintiff, since job referrals under the Order of Consolidation would be shared with members of two other local unions consolidated, as well as along craft lines. Moreover, each member of plaintiff will have to compete in the territory of Morris County with a large group of journeymen and will lose the advantage of their present positions on the out of work list of plaintiff. Therefore, there will be immediate and irreparable injury to the property rights of the members of plaintiff unless defendant is restrained and enjoined from disbanding Local 334 and enforcing the Order of Consolidation. Plaintiff itself will be required to surrender its assets to be divided between two local unions. Since a great portion of these assets consist of realty, a sale of that realty so as to conform with the division of assets will result in irreparable injury to plaintiff itself unless defendant is restrained and enjoined from enforcing the Order of Consolidation.[3] (J.A. 59-60).

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[3] In addition to alleging that the consolidation was "illegal" under the Constitution, the amended complaint alleged in separate counts that, in issuing the Order of Consolidation, the United

2. *Removal to the District Court and the Proceedings Therein*

Asserting that federal jurisdiction existed under Section 301(a) of the Labor Management Relations Act, 29 U.S.C. § 185(a), the United Association timely removed the case, pursuant to 28 U.S.C. § 1446, to the United States District Court for the District of New Jersey. (J.A. 52). Later, Local 334 filed a motion to remand the case to state court, which the District Court denied in an order filed October 20, 1977 (J.A. 98). The order denying remand also permitted several of the other locals involved in the consolidation to intervene, which they did, some supporting the consolidation and others opposing it.[4]

Immediately after the case had been removed, Local 334 succeeded in obtaining an *ex parte* temporary restraining order from the District Court, which enjoined the Order of Consolidation insofar as it affected Local 334. Among the specific acts which the Order prohibited the United Association from committing was "interfering with the contractual relations of Plaintiff with employers" (J.A. 67). However, after a hearing, the Local's

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Association's General President had abused his discretion and had failed to set forth adequate reasons for his action. The amended complaint also renewed the same claim made in the original complaint, namely, that the Local was entitled to another hearing before the General Executive Board. See J.A. 61-65.

[4] Locals 49, 84, 124 and 523 intervened on the side of Local 334 and Locals 14 and 274 intervened on the side of the United Association. Locals 14 and 274 are petitioners here. However, none of the Locals which intervened in the District Court on the side of Local 334 joined in the appeal of the District Court's decision to the Court of Appeals; thus, although identified in the petition for certiorari as respondents, those locals (Locals 49, 84, 124 and 523) are no longer parties.

request for a preliminary injunction was denied and the restraining order was subsequently dissolved.

In late 1978, after completion of discovery, the United Association and Local 334 filed cross-motions for summary judgment. In a Letter Opinion dated August 17, 1979 the District Court issued a decision in favor of the United Association (Pet. 20a). It ruled first that the Local had failed to exhaust its internal union remedies within the United Association. It ruled in the alternative that the United Association was entitled to summary judgment on the merits. After reviewing the relevant provisions of the Constitution and the history of their adoption and amendment, the District Court concluded that there was "ample basis for the U[nited] A[ssociation]'s interpretation of the Constitution as well as the application of that interpretation in the Order of Consolidation of August 4, 1977" (Pet. 28a).

3. *The Proceedings in the Court of Appeals*

The Local appealed the District Court's decision. Nowhere in the main brief it filed with the Court of Appeals for the Third Circuit or in its Reply to the United Association's brief did the Local contend that the District Court lacked subject matter jurisdiction under Section 301(a). However, the Court of Appeals raised this issue *sua sponte* and the parties were requested to submit supplemental briefs on the issue prior to oral argument, and further supplemental briefs after argument.

On August 4, 1980, the Court of Appeals issued its decision, which held that the District Court lacked subject matter jurisdiction over the controversy. The Court rejected the position advanced by the United Association that there is federal jurisdiction under Section 301(a) over any action between two labor organizations in which a violation of a union constitution is alleged (Pet. 18a).

The Court stated the test for jurisdiction in such actions to be whether the pleadings present allegations of actions which have a "significant impact on labor-management relations or industrial peace" (Pet. 18a). Determining that the standard which it thus formulated was not satisfied by the allegations of the pleadings in this case, the Court held that jurisdiction was lacking (Pet. 18a). Accordingly, the Court of Appeals vacated the judgment of the District Court and remanded to the District Court with instructions to remand the case to the state court from which it had been removed (Pet. 19a). The Court expressly reserved decision on the merits of the case (Pet. 18a, n. 20).

The United Association's petition for certiorari was filed on October 31, 1980.[5] On January 26, 1981, this Court granted the writ of certiorari.

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[5] On August 20, 1980, the Court of Appeals granted a stay of its mandate until November 2, 1980, to permit the United Association to file a petition for writ of certiorari. Apparently unaware that the Court of Appeals had already stayed its mandate, the District Court, on August 22, 1980, issued an order remanding the action to the state court. The District Court's remand order was issued in error and no effort has been made by any party to reinstate proceedings in the state court.

SUMMARY OF ARGUMENT

Section 301(a) of the Labor Management Relations Act of 1947 provides federal jurisdiction over "suits for violation of contracts between * * * labor organizations [representing employees in an industry affecting commerce]." On its face, this language constitutes a clear predicate for jurisdiction over the present case, brought against a national union by one of its affiliated locals, alleging that the national violated its constitution when it issued an order directing the consolidation of several local unions.

Of the ten Courts of Appeals which have considered the present jurisdictional issue only one, the Tenth Circuit, has held that a national union cannot be a "contract" under § 301(a). This view is plainly unsound. At the time that § 301(a) was enacted union constitutions had for many years been recognized to be contracts by federal law (*Coronado Co.* v. *U. M. Workers*, 268 U.S. 295, 304) and (apparently without exception) by state law as well. This general understanding was undoubtedly shared by the conference committee which inserted the "between such labor organizations" language into § 301(a), and which was conscious of the *Coronado* case, whose agency principle it codified in § 301(e). See *Carbon Fuel Co.* v. *Mine Workers*, 444 U.S. 212, 217.

Restricting the scope of the statutory language which Congress enacted on "policy" grounds cannot be justified.. See *Harrison* v. *PPG Industries, Inc.*, 446 U.S. 578. Moreover, the belief that such a restriction is necessary to avoid materially expanding the business of the federal courts has not been borne out by the experience of those Circuits where no restriction on jurisdiction has been recognized. Nor may such a restriction be justified on fear of interference with internal union affairs. Judicial enforcement of union constitutions in the federal courts is entirely different from governmental imposition of sub-

stantive rules and regulations. Thus, Congress created numerous substantive rules for labor-management relations in §§ 8(a) and (b), but left contract enforcement to the courts in § 301(a).

But if the existence of jurisdiction under § 301(a) does depend on whether a controversy has a significant impact on labor-management relations, as the Court below ruled, that court nevertheless erred in refusing to assert federal jurisdiction in this case. The pleadings in the case alleged that the national union's action affected the existing system of referral of men to employment and the identity of the union representing employees in collective bargaining with employers, two matters which lie at the very core of "labor-management relations."

ARGUMENT

I. THE DISTRICT COURT HAD JURISDICTION UNDER SECTION 301(a) OF THE LMRA BECAUSE THIS IS A SUIT FOR VIOLATION OF A CONTRACT BETWEEN LABOR ORGANIZATIONS REPRESENTING EMPLOYEES IN AN INDUSTRY AFFECTING INTERSTATE COMMERCE.

A. The United Association's Constitution is a "Contract" Between Labor Organizations Representing Employees in an Industry Affecting Commerce.

Our primary position is that the District Court had jurisdiction over this action because Congress expressly granted the federal courts jurisdiction over suits between a national labor organization and an affiliated local labor organization for violation of the national's Constitution.[6]

(1) In our analysis "[w]e begin with the familiar canon of statutory construction that the starting point for interpreting a statute is the language of the statute itself. Absent a clearly expressed legislative intention to the contrary, that language must ordinarily be regarded as conclusive." *Consumer Product Safety Comm'n* v. *GTE Sylvania*, 447 U.S. 102, 108.[7]

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[6] Throughout this brief the terms "national labor organization" and "international labor organization" will be used interchangeably. Cf. § 10(c) of the Act, 29 U.S.C. § 160(c). The United Association, in common with many other labor organizations, has affiliates in Canada as well as in the United States, and is for that reason generally referred to as an "international labor organization."

[7] The Court below expressly declined to consider whether the language of the jurisdictional statute covers this suit. See Pet. 11a, n. 13, quoted at p. 20, *infra*. It therefore seems necessary to point out that the Court of Appeals' methodology was totally inconsistent with the teachings of this Court. We confine ourselves to quoting some of the Court's most recent unanimous opinions which enunciate the same principle as the *GTE Sylvania* case quoted in the text:

[Footnote continued on page 13]

The statutory language which controls the issue in this case is that of § 301(a) of the Labor Management Relations Act of 1947:

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in the Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.[8]

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[7] [Continued]

"The search for Congressional intent begins with the language of the statute." *Steadman* v. *SEC*, 49 U.S.L.Wk. 4176 (Feb. 25, 1981).

"We begin by looking to the language of the Act." *Rubin* v. *United States*, 49 U.S.L.Wk. 4103, 4104 (Jan. 21, 1981).

"Our point of departure in statutory analysis is the language of the enactment. See *Southeastern Community College* v. *Davis*, 442 U.S. 397, 405 (1979). 'Though we may not end with the words in construing a disputed statute, one certainly begins there.' F. Frankfurter, Some Reflections on the Reading of Statutes 16 (1947)." *Andrus* v. *Allard*, 444 U.S. 51 at 56.

"As is true in every case involving the construction of a statute, our starting point must be the language employed by Congress." *Reiter* v. *Sonotone Corp.*, 442 U.S. 330 at 337.

"It is elementary that '[t]he starting point in every case involving construction of a statute is the language itself.' *Blue Chip Stamps* v. *Manor Drug Stores*, 421 U.S. 723, 756 (1975) (Powell, J., concurring)".

[8] The major qualification suggested by this language is that both labor organizations must "represent employees in an industry commerce as defined in the Act" (see § 301(a)). Likewise, only such organizations may, under the terms of § 301(a) sue and be sued by employers. Since the term "affecting commerce" is very broadly defined in § 2(7) of the Act, that requirement has only minimal practical significance. However the "affecting commerce" phrase obviously provides the indispensable nexus between § 301 and Congress' commerce power, under whose aegis the entire statute and § 301(a) in particular, were enacted. See, *e.g.*, *Textile Workers* v. *Lincoln Mills*, 353 U.S. 448, 457. The "affecting commerce" requirement applies also to suits between employers and labor organizations under § 301(a).

We are here particularly concerned with that portion of § 301(a) which grants jurisdiction over "suits for violation of contracts * * * between any such lagor organizations" (*i.e.*, "labor organizations representing employees in an industry affecting commerce * * *").

In the first appellate case to decide the present question, *F rks* v. *International Brotherhood of Electrical Wkrs.*, 314 F.2d 886 (C.A. 4), *cert. denied*, 372 U.S. 976, Chief Judge Sobeloff wrote:

> A local union is a "labor organization" within the definition of § 2(5) of the NLRA, 29 U.S.C.A. § 152(5). In addition, "contract" as used in section 301(a) should be taken to include union constitutions. The Supreme Court itself has recognized that under state law this is the generally accepted characterization of union constitutions. [314 F.2d at 917, footnote omitted.]

So, too, in *National Association of Letter Carriers* v. *Sombrotto*, 449 F.2d 915 (C.A. 2), Judge Friendly wrote:

> Section 301(a) of the Labor Management Relations Act of 1947, 29 U.S.C. § 185(a), provides federal jurisdiction to entertain "suits for violation of contracts between * * * any such labor organizations [representing employees in an industry affecting commerce]." On its face, this language constituted a clear predicate for jurisdiction at the time the complaint was brought to enforce the relevant provisions of the NALC Constitution. * * * Section 1208(b) of the 1970 Postal Reorganization Act, 84 Stat. 719, 39 U.S.C. § 1208(b), which for purposes here relevant came into effect on July 1, 1971, tracks the language of § 301 of the Labor Management Relations Act, making explicit that such jurisdiction will extend to suits for violations of contracts between labor organizations representing employees of the United States Postal Service. [449 F.2d at 918; case citations omitted.]

This straightforward reading of § 301(a)'s plain language is entirely sound, as we now show.

(2) While the history of what became § 301(a) is extensive, and has been canvassed in several of this Court's opinions,[9] the history of the clause "or between any such labor organizations" is quite sparse, because as the Court observed in *Retail Clerks* v. *Lion Dry Goods*, 369 U.S. 17, 26, "The provision for suits between labor organizations was inserted in Conference." [10] The Conference Report provides no explanation of this action.

Against this background, the approach most recently restated in *Perrin* v. *United States*, 447 U.S. 37, 42, is very much to the point:

> We begin with the language of the Travel Act itself. *Southeastern Community College* v. *Davis*, 442 U.S. 397, 405 (1979); *TVA* v. *Hill*, 437 U.S. 153, 173 (1978). A fundamental canon of statutory construction is that, unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common meaning. *Burns* v. *Alcala*, 420 U.S. 575, 580-581 (1975). *Therefore, we look to the ordinary meaning of the term "bribery" at the time Congress enacted the statute in 1961.* (Emphasis added.)

And at the time § 301(a) was enacted federal law *did* treat national Constitutions as contracts.

In *Coronado Co.* v. *U. M. Workers*, 268 U.S. 295 (*Coronado II*), the Court, referring to *United Mine*

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[9] See, *e.g.*, *Textile Workers* v. *Lincoln Mills*, 353 U.S. 448, 452-456; *Dowd Box Co.* v. *Courtney*, 368 U.S. 502, 509-513; *Retail Clerks* v. *Lion Dry Goods*, 369 U.S. 17, 26, 27-28, n. 12; *Carbon Fuel Co.* v. *Mine Workers*, 444 U.S. 212, 216-217.

[10] The Court treated the addition of the clause as strong evidence militating against a narrow construction of "contracts" when it was sought to limit that term "to collective bargaining agreements"; the Court observed that "a federal forum was [thereby] provided for actions on other labor contracts besides collective bargaining contracts." *Id.*

Workers v. *Coronado Co.*, 295 U.S. 344 (*Coronado I*) declared:

> In our previous opinion we held that a trades-union, organized as effectively as this United Mine Workers' organization was, might be held liable, and all its funds raised for the purpose of strikes might be levied upon to pay damages suffered through illegal methods in carrying them on; but certainly it must be clearly shown in order to impose such a liability on an association of 450,000 men that what was done was done by their agents in accordance with their fundamental agreement of association. [268 U.S. at 304.]

The "fundamental agreement of association" referred to was, of course, the International Constitution of the United Mine Workers.

It can be asserted with considerable confidence that the Conference which adopted § 301(a), and added thereto the "between any such labor organizations" clause (see p. 15, *supra*) was fully aware of the *Coronado* case, and that it understood that *Coronado* treated a national Constitution as a contract. Two major purposes and consequences of the enactment of § 301 were to codify and make universal the rules which had been laid down as federal law in the *Coronado* cases that labor organizations may sue and be sued as entities, and that their liability is to be determined according to the common law of agency. See *Carbon Fuel Co.* v. *Mine Workers*, 444 U.S. 212, 217. Indeed, a "principal motive behind the creation of federal jurisdiction in this field was the belief that the courts of many States could provide only imperfect relief because of rules of local law which made suits against labor organizations difficult or impossible, by reason of their status as unincorporated associations". *Dowd Box Co.* v. *Courtney*, 368 U.S. 502, 510.

As the Court observed in *Carbon Fuel Co.*:

> * * * to effectuate § 301(a), the Taft-Hartley Act provided in § 301(b) that a union "shall be bound by the acts of its agents," and in § 301(e) provided that the common law of agency shall govern "in determining whether any person is acting as an 'agent' of another person."
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> Congress' reason for adopting the common-law agency test, and applying to unions the common-law doctrine of *respondeat superior*, follows the lead of Mr. Chief Justice Taft in *Coronado Coal Co.* v. *Mine Workers*, 268 U.S. 295, 304 (1925), that to find the union liable "it must be clearly shown . . . that what was done was done by their agents in accordance with their fundamental agreement of association." [444 U.S. at 216-217.][11]

In short, if the Conference Committee, and ultimately the Congress which enacted the Conference Report, based its understanding of the word "contracts" on federal law, then that term clearly encompasses the Constitutions of national unions.

If, on the other hand, the Conference's understanding was based not on federal law, but on a more generalized perception of the legal nature of such Constitutions, the result would be the same. For, as this Court recognized

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[11] Of course, the context of the Court's discussion in *Carbon Fuel* was the scope of union liability for breach of a collective bargaining agreement with an employer; the enforceability of such agreements was the primary objective of § 301. But as *Carbon Fuel* itself demonstrates, in achieving that objective Congress did not simply enact § 301(a) to make such agreements enforceable in federal courts, but provided, *inter alia*, for the juridicial status, and scope of liability of labor organizations. Moreover, Congress did not confine § 301 to collective bargaining agreements, but used the broader term "contracts" (see *Retail Clerks* v. *Lion Dry Goods*, 369 U.S. 17) and added the clause concerning suits between labor organizations, the meaning of which is at issue in this case.

in *Machinists* v. *Gonzales*, 356 U.S. 617, 618-619 national Constitutions have been considered to be "contracts" by the law of most, and perhaps all states which considered the question. Wet set forth in the margin a list of state cases which had so held as of 1947. The list is far from exhaustive, and our research has uncovered none holding that a national Constitution is not a contract.[12]

The conclusion is inescapable that when Congress enacted § 301(a) which provides that "suits for violation of contracts * * * between any such labor organizations may be brought in any district court of the United States * * *" the legislature granted the federal courts jurisdiction over suits for violation of the national Constitution between a national union and its local unions.

(3) This conclusion was followed without qualification not only by the Fourth and Second Circuits in *Parks* and *Sombrotto*, but also by the Sixth Circuit in *Trail* v. *International Broth. of Teamsters, Etc.*, 542 F.2d 961 (C.A. 6), which stated succinctly:

> The language of § 301(a) authorizes in its terms "Suits for violation of contracts . . . between any

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[12] *Textile Workers Local 204* v. *Federal Labor Union 21500*, 240 Ala. 239, 198 So. 606 (1940); *Scott* v. *Donahue*, 93 Cal. App. 126, 269 Pac. 455 (1928); *Grand Lodge, I.A.M.* v. *Reba*, 97 Conn. 235, 116 Atl. 235 (1922); *Brotherhood of Railway Trainmen* v. *William*, 211 Ky. 638, 277 S.W. 500 (1925); *Local 76* v. *Carpenters*, 143 La. 902, 79 So. 532 (1918); *Barbrick* v. *Huddell*, 245 Mass. 428, 139 N.E. 629 (1923); *Minnesota Council of State Employees* v. *American Federation of State Employees*, 220 Minn. 179, 19 N.W.2d 414 (1945); *Harris* v. *Geier*, 112 N.J. Eq. 99, 164 Atl. 50 (Ch. 1932); *Alexion* v. *Hollingsworth*, 289 N.Y. 91, 43 N.E. 2d 825, 828 (1942); *Harris* v. *Backman*, 160 Or. 520, 86 P. 2d 456 (1939); *O'Neill* v. *United Association*, 348 Pa. 532, 36 A.2d 325 (1944); *Carpenters* v. *Local 14*, 178 S.W.2d 558 (Tex. Civ. App. 1944); *Lumber and Sawmill Workers Union No. 2623* v. *International Wood Workers Local 49*, 197 Wash. 491, 85 P. 2d 1099 (1938).

> such labor organizations." We see no reason why such a contract might not be expressed in a union constitution, a local union charter, or a combination of both. [*Id.* at 968.]

This observation was quoted with approval by the Seventh Circuit in *Local Union No. 657, Etc.* v. *Sidell*, 552 F.2d 1250, 1253 (C.A. 7), *cert. denied* 434 U.S. 962 (hereafter "*Sidell*").

But the *Sidell* court, in asserting jurisdiction over the case before it, suggested that § 301(a) might apply only where the dispute "may effect [sic] labor-management relations". *Id.* at 1256. So, too, the First Circuit while also recognizing that the language of § 301(a) is unqualified has indicated that there may be no jurisdiction over "purely internal union affairs". *Local No. 1219, Etc.* v. *United Bro. of Carpenters & Join.*, 493 F.2d 93, 95-96 (C.A. 1) (hereafter "*Local 1219*"). But the salient point for present purposes is that each of these five Courts of Appeals has recognized that there is federal jurisdiction over suits between a national union and its affiliate for violation of the national Constitution under "the literal meaning of the statute". (*Id.* at 96.)

It is also significant that four Courts of Appeals which have declined federal jurisdiction over the particular suits before them have done so without even partial reliance on the view that the language of § 301(a) suggests any limitation on federal court jurisdiction over cases between two unions based on a national Constitution.[13] See, in addition to the opinion below, especially at Pet. 14a-15a, 18a, *1199 DC, National Union of Hospital and Health Care Employees, AFL-CIO, et al.* v. *National Union of*

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[13] Indeed these courts have adopted standards which contemplate that jurisdiction will lie over some suits between national and local unions (see Part II, *infra*) and thus that they are within the statutory language of § 301(a).

Hospital and Health Care Employees, 533 F.2d 1205 (C.A. D.C.) (hereafter "*1199 DC*"); *Stelling* v. *International Brotherhood of Electrical Workers*, 587 F.2d 1379 (C.A. 9), *cert. denied*, 442 U.S. 944 (hereafter "*Stelling*"); and *Alexander* v. *International Union of Operating Engineers*, 624 F.2d 1235 (C.A. 5) (hereafter "*Alexander*").

Indeed, the Court below, in its opinion in this case expressly declined to consider whether a union Constitution is a "contract" for purposes of § 301(a). Referring to the Seventh Circuit decision in *Sidell*, *supra*, the Court below said:

> The court decided that a § 301(a) contract might be expressed in a union constitution, a local union charter, or a combination of both. *Id.* at 1253. We need not reach this issue. [Pet. 11a, n. 13.]

In this respect, the Court below followed the lead of the District of Columbia Circuit in *1199 DC*, 533 F.2d 1205, 1207-1208. Of course, the failure of these courts to even consider what the statutory language means is precisely contrary to this Courts' instructions. See text and note at pp. 12-13, n. 7, *supra*.

The one appellate court which has categorically held that "* * * § 301(a) does not confer jurisdiction of a dispute between a parent union and a local union over the meaning of the parent's constitution" is the Tenth Circuit. *Smith* v. *United Mine Workers of America*, 493 F.2d 1241, 1243. In the Tenth Circuit's view, a national Constitution is not a "contract" within the meaning of § 301(a).[14] The Court said:

> We recognize that § 301(a) must be liberally applied to promote industrial peace, but that principle has no application here. This controversy relates only to the construction and application of the union constitution and has nothing to do with labor-

[14] The Court recognized that the International (United Mine Workers) and the locals are labor organizations, and that they represent employees in an industry affecting commerce. *Id.* at 1242.

> management relations. It may be that under the law of some states a union constitution is a contract between the union and its members. See International Association of Machinists v. Gonzales, 356 U.S. 617, 618-619, applying California law. We are concerned with federal, not state, law and we must view § 301 in the light of its underlying purpose to provide a federal remedy in cases where, because of difficulties in suing labor associations, other remedies were inadequate. See Lincoln Mills, *supra*, 353 U.S. at 453-454. [493 F.2d at 1243.]

Although it determined that the meaning of the word "contract" is a matter of federal law, the Court did not stop to consider whether national Constitutions were considered to be "contracts" under federal law at the time that § 301(a) was enacted. If the Court had done so, it would necessarily have concluded that federal law did treat national Constitutions as "contracts."

The Tenth Circuit actually drew from the absence of legislative history support for its conclusion that § 301(a) does not reach suits between national unions and their locals:

> If Congress intended to turn over to the federal courts the control and supervision of internal union affairs which have no external application to industrial peace or to collective bargaining agreements we believe that Congress would have said so explicitly. [493 F.2d at 1243-1244.]

But this line of argument from Congressional silence in the course of enacting a jurisdictional statute was expressly rejected in *Harrison* v. *PPG Industries, Inc.*, 446 U.S. 578, 591-592. This, then, "is a case for applying the canon of construction of the wag who said when the legislative history is doubtful, go to the statute." *Greenwood* v. *United States*, 350 U.S. 366, 374.[15]

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[15] To be sure, the legislative history of § 301 in its entirety, and indeed of the LMRA as a whole, is of relevance in interpreting the

B. The Policy Arguments Against Reading Section 301(a) As Written Are Unsound In Principle and On Their Face.

In *Smith, supra,* the Tenth Circuit said:

> A holding that the word "contracts" as used in § 301(a) encompasses union constitutions would open the doors of the federal courts to every dispute between a parent union and a local union over the meaning and effect of the union constitution. [493 F.2d at 1243.]

As a basis for declining jurisdiction which Congress granted, this argument is fundamentally unsound. As Chief Justice Marshall wrote:

> It is most true, that this court will not take jurisdiction if it should not: but it is equally true, that it must take jurisdiction, if it should.
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> We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. *Cohens* v. *Virginia,* 6 Wheat. (19 U.S.) 264, 403.

See also, *e.g., Harrison* v. *PPG Industries, Inc.,* 446 U.S. 578, 592-594.

And insofar as the Tenth Circuit's statement is intended as an argument for a narrow construction of

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particular portion of § 301(a) which is at issue here, and is therefore entitled to consideration. Thus, as we have shown, the history of § 301(b) and (e) sheds light on the Congressional understanding of "contracts". So too, the legislative history of § 301 illuminates the effect to be given to particular provisions by showing the purposes which Congress sought to achieve. More generally, it is proper to look at Congressional policies in other provisions of the Act insofar as they may bear on the meaning of a particular provision, although care must be taken against drawing inferences which would treat unconnected provisions of major legislation as if the statute were a single monolithic entity.

§ 301(a), it is wide of the mark for several reasons in addition to the most obvious and overriding objection that it is wholly without basis in the language of the statute or its legislative history.

(1) There is no basis for fearing that the business of the federal courts would be materially expanded by allowing suits between national unions and their locals for violation of the naitonal's Constitution. Even on a generous estimate there have been probably a total of less than fifty such suits throughout the federal system. For example, the Fourth Circuit has recognized such suits since *Parks* was decided in 1963 (see p. 14 *supra*) and if the reported decisions are any guide, there has been no influx of such suits in the district courts of that Circuit. So too, jurisdiction has been clear in the Second Circuit since *Sombrotto* was decided in 1971 (*id.*), but has apparently attracted only a handful of such cases in the courts of that relatively litigous jurisdiction. In all probability a decision sustaining the *Parks-Sombrotto* construction of § 301(a) would bring fewer cases into the federal courts than the holding in *Lion Dry Goods* that the term "contracts" is not limited to collective bargaining agreements. And it can be stated with positive assurance that the enlargement of federal jurisdiction would be miniscule when compared with that effectuated by the decision in *Textile Workers* v. *Lincoln Mills*, 353 U.S. 448, where, it will be recalled, the result was reached over weighty statutory and constitutional objections advanced in Justice Frankfurter's dissenting opinion, *id.* at 460-484.

(2) In contrast with the Tenth Circuit's view that a union Constitution is not a contract, the reluctance of the Courts of Appeals to read § 301(a) as permitting interference in internal union affairs is not wholly unjustified. For the legislative history of the LMRA evidences that the 1947 Congress consciously declined to enter into the substantive regulation of internal union affairs. It rejected

provisions in the House bill which would have closely regulated union affairs,[16] and enacted a proviso to § 8(b)(1)(A) protective of union rules.[17] Thus, as of 1947, Congress' policy had not yet moved to the point which it reached in 1959 when it enacted Titles I through VI of the Labor Management Reporting and Disclosure Act of 1959, 73 Stat. 519. But the fact that the 1947 Congress stopped short of regulating internal union affairs cannot bear the weight which the Court below and other Courts of Appeals have placed on that decision in their interpretation of § 301(a).

It is perhaps a sufficient refutation of their reading that their tests (however verbalized) require a heroic rewriting of the language of § 301(a). In any event, their construction of § 301(a) simply does not follow from their premise—which we grant—that the LMRA was not designed to regulate the internal affairs of labor organizations. For, the enforcement of contracts—here union Constitutoins adopted by the members themselves—is materially different from the imposition by government of substantive rules and regulations such as was accomplished in the LMRDA and had previously been undertaken by some states. The difference was understood in the very decision to enact § 301(a). Although §§ 8(a) and (b) of the LMRA (part of the amendments to the National Labor Relations Act) contain numerous significant regulations of the conduct of employers and unions, the enforcement of agreements between them was "left to the usual processes of the law"—that is, judicial enforcement under § 301(a). See *Dowd Box Co., supra*, 368 U.S. at 511, quoting p. 42 of

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[16] H.R. 3020 as passed by the House, § 8(c).

[17] "Provided, that this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein * * *."

the Conference Report. Moreover, such agreements were determined to be enforceable, although a Congressional policy "of particular importance—if not the overriding one—was the policy of free collective bargaining." *Carbon Fuel, supra*, 444 U.S. at 218. See also *id.* at 219, quoting § 8(d) and cases cited *id.* Thus, Congress considered the judicial enforcement of contracts between employers and union to be entirely consistent with the right of these parties to make voluntary decisions as to the terms of these contracts. So too, judicial enforcement under § 301 (a) of union Constitutions—which Congress understood to be "contracts" (see pp. 15 to 18, *supra*)—is entirely consistent with the Congressional judgment that union members should remain free to decide what the provisions of their Constitution shall be.

In sum, the reasoning of the Tenth Circuit, which has wholly disallowed such suits, and that of the other Courts of Appeals which has also given a narrowing construction to the "suits between such labor organizations" clause is wholly inconsistent with this Court's decisions in *Lincoln Mills* and *Lion Dry Goods*, which gave hospitable scope to the jurisdictional grant of § 301(a) in recognition of the Congressional policy which strongly favors the enforcement of contracts by and against labor organizations.

II. EVEN IF A SIGNIFICANT IMPACT ON LABOR-MANAGEMENT RELATIONS IS NECESSARY TO SUSTAIN JURISDICTION IT IS PRESENT ON THIS RECORD.

If, contrary to our submission in Part I hereof, the existence of jurisdiction under § 301(a) does depend upon whether or not a controversy has a "significant impact on labor-management relations or industrial peace", as the Court below held (Pet. 18a), the Court still was in error in finding an absence of jurisdiction in this case.

For despite what the Court held and what Local 334 itself has only recently strained to deny, from the very beginning of this action that local has asserted that the consolidation would directly and substantially affect two matters which lie at the very core of "labor-management relations"—the referral of men to employment and the identity of the union party(ies) to negotiations and agreements with employers. Thus, having formulated a test for jurisdiction, the Court then failed to apply it properly to the circumstances of the case before it.

The existence of federal question jurisdiction under the "labor-management relations" standard appears on the face of plaintiff's complaint. See *Oneida Indian Nation* v. *County of Oneida*, 414 U.S. 661, 665. Both the complaint and amended complaint filed by Local 334 alleged that the consolidation would change the referral system that had been in existence for many years in Morris County, New Jersey. Whereas, prior to the consolidation, Local 334 "operate[d] a hiring hall" (J.A. 56) that made referrals of men to employment "from a unified list, regardless of whether the job requires a plumber or pipefitter and regardless of the membership designation of each such member" (J.A. 56), the Order of Consolidation divided the local "along craft lines" (J.A. 59) and instituted "separate referral lists" (J.A. 21, 59) for plumbers and pipefitters. Moreover, both the complaint and amended complaint alleged that the consolidation displaced Local 334 altogether as the union representing both classes of employees in collective bargaining and contractual relations with industry employers. See complaint, para. 12, J.A. 21; amended complaint, para. 9-11, 26-28, J.A. 56.

The Court of Appeals, in its review of the jurisdiction issue, regarded these effects of the consolidation as only as only "intraunion" in nature or of minimal impact on labor relations (Pet. 16a). The Court concluded that

a union's referral procedure is simply an "internal union device," over which the union alone has discretion (Pet. 16a). Any change in that procedure, the Court apparently assumed, could not affect labor relations. And while acknowledging that the consolidation would result in the termination of Local 334's own contractual relations with and obligations ot employers, the Court held that since the two successor locals (Locals 14 and 274) were to assume those obligations, any impact on labor relations would not be sufficient to warrant the exercise of federal jurisdiction (See. Pet. 16a).

We submit that these rulings are erroneous as a matter of law. A change in the method of referring men to employment (particularly one as extensive as that which was alleged in this case) is not simply an "internal union matter," as the Court below termed it. Such an exclusive referral procedure would not exist at all but for an employer-union agreement to that effect. See generally, *Teamsters Local* v. *Labor Board*, 365 U.S. 667. The Court there quoted Senator Taft's discussion of hiring halls during a debate on proposed amendments to the LMRA:

> In order to make clear the real intention of Congress, it should be clearly stated that the hiring hall is not necessarily illegal. The employer should be able to make a contract with the union as an employment agency. The union frequently is the best employment agency. The employer should be able to give notice of vacancies, and in the normal course of events to accept men sent to him by the hiring hall. He should not be able to bind himself, however, to reject non-union men if they apply to him; nor should he be able to contract to accept men on a rotary-hiring basis. [*Id.* at 673-674, quoting S. Rep. No. 1827, 71st Cong., 2d Sess. p. 13.]

So, too, in 1959 one of the reasons Congress enacted § 8(f) was "that the employer must be able to have

available a supply of skilled craftsmen ready for quick referral". (H.R. Rep. No. 741, 86th Cong., 1st Sess., p. 19 (1959) quoted in *NLRB* v. *Iron Workers*, 434 U.S. 335, 348. See also S. Rep. No. 187, 86th Cong., 1st Sess. (1959) p. 28.)[18] Thus, even where the decision as to which persons are to be referred is left to the union, the employer is obviously and directly affected; and any change in the existing referral procedure can impact upon the employer just as certainly and substantially as a breach of the referral provision of the collective bargaining agreement itself.

Similarly, an international union's order which results in the displacement by two new local unions of the one local which had been party to collective bargaining with area employers for several years cannot be lightly dismissed as an event of only "minimal" significance in labor-management relations. The Court of Appeals justified its characterization on the basis that, under the Order of Consolidation, the two successor locals were to assume Local 334's existing collective bargaining agreements. (Pet. 16a). However, the record discloses that within less than one year from the date when the Order was issued, the Local 334 agreement had been terminated and, in its place, the separate agreements of Locals 14 and 274 had become operative. (J.A. 142.) More fundamentally the holding in *John Wiley & Sons* v. *Livingston*, 376 U.S. 543 that the duty to arbitrate survives a corporate merger rested at least in part on the recognition that the transition from one corporate organization to another might otherwise result in industrial strife. *Id.* at 549. "The objectives of national labor policy, reflected in established principles of federal law, require that the rightful prerog-

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[18] Indeed, the Hearing Officers' Report, which was an exhibit to the complaint discloses that in bringing about that change to the separate plumber and pipefitter referral systems, the United Association was very much aware that its action could directly and favorably affect industry employers and the unions' ability to fulfill their manpower needs. (J.A. 37)

ative of owners independently to rearrange their businesses and even eliminate themselves as employers be balanced by some protection to the employees from a sudden change in the employment relationship." *Id.* The consolidation of locals at issues in the case *sub judice* is simply the union-side equivalent of the corporate merger, and its potential for effect on labor-management relations is no less great.

In holding the impact on labor-managements relations to be insufficient in this case, the decision below was directly at odds with the decisions and reasoning of two other Courts of Appeals, both of which have assumed such an impact to be a precondition to federal jurisdiction but found it present on the basis of facts very similar to those alleged by Local 334 in this case. In *Local 1219, supra,* the First Circuit sustained jurisdiction over an action under an international union constitution brought when an international chartered a new local union to represent certain employees but then failed to take the action necessary to permit the new local to refer the men to employment (493 F.2d at 94). As the Seventh Circuit observed in analyzing the *Local 1219* case, "There were no strikes or other overt breaches of industrial peace." *Sidell, supra,* 552 F.2d at 1254-1255. Nevertheless, finding that the dispute "directly concern[ed] the representation of workers in collective bargaining," the Court of Appeals for the First Circuit found no reason "to depart from the literal meaning of the statute" and upheld the exercise of jurisdiction. 493 F.2d at 96. The action which precipitated the suit in *Sidell, supra,* was an international union's order that a local affiliate with a certain district council. The only indication of an effect on labor relations was an allegation by the Local in its complaint that the order of affiliation would cause "harm and interference with its relationship and contracts with its employers." This allegation was deemed sufficient by the Seventh Circuit to invoke federal jurisdiction. As the Court explained, ". . . here we have an allegation affecting the local's

relationship with employers, rather than . . . mere intra-union organization change . . ." 552 F.2d at 1255.

In sum, the First and Seventh Circuits correctly recognize that there is a significant impact on labor-management relations in disputes which originate over union actions, like the Order of Consolidation in this case, which pertain to matters of internal union organization. The Third Circuit's contrary conclusion rests on an entirely unrealitsic view of labor-management relations. Thus it erred in holding that there was no federal jurisdiction here even if that court's legal standard (or some other requirement of labor-management effects) were to be read into the unqualified jurisdictional language of § 301(a).

CONCLUSION

For the foregoing reasons the judgment of the Court of Appeals should be reversed.

Respectfully submitted,

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IN THE

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OCTOBER TERM, 1980

UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, AFL-CIO, *et al.*,
Petitioners,

v.

LOCAL 334, UNITED ASSOCIATION, ETC.,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit

---

BRIEF FOR RESPONDENT

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QUESTION PRESENTED

Whether Section 301 of the Labor Management Relations Act of 1947 creates subject matter jurisdiction in the federal courts over suits concerning an alleged violation of a union constitution.*

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* In addition to the United Association and Local 334, the other parties to the proceedings below were United Association Locals 49, 523, 124, 84, 14 and 274. Locals 49, 84, 124 and 523 intervened on the side of Local 334 and Locals 14 and 274 intervened on the side of the United Association. Locals 14 and 274 are petitioners here. However, of the Locals which intervened in the District Court on the side of Local 334, only Local 49 joined in the appeal of the District Court's decision to the Court of Appeals. Although identified in the petition for certiorari as respondents, those locals (Locals 49, 84, 124 and 523) are no longer parties.

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UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, AFL-CIO, *et al.*,
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v.

LOCAL 334, UNITED ASSOCIATION, ETC.,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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BRIEF FOR RESPONDENT

OPINIONS BELOW

The opinion of the Court of Appeals is reported at 628 F.2d 812. It is reproduced at pp. 1a to 19a of the Petition for Certiorari (hereafter referred to as "Pet.").

The opinion of the District Court was in the form of a Letter Opinion dated August 17, 1979 and is unreported. It is reproduced at Pet. 20a to 28a.

JURISDICTION

The judgment of the Court of Appeals was entered on August 4, 1980 (Pet. 29a-30a). This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTE INVOLVED

Section 301(a) of the Labor Management Relations Act of 1947 (hereafter "LMRA" or "the Act"), 61 Stat. 136 *et seq.*, 29 U.S.C. § 185(a), provides as follows:

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in the Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

STATEMENT OF THE CASE

A. The Facts as Alleged by Local 334

Local 334, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada (hereafter "Local 334") is a labor organization chartered by and affiliated with the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada (hereafter "the United Association").[1] Local 334 is a combination local, representing both plumbers and pipefitters in Morris County, New Jersey. (J.A. 19, 54-55, 91).[2]

Local 334 operates a hiring hall for employers needing journeymen or apprentices. Employers call the hall and Local 334 refers the needed employees (J.A. 56, 92). Local 334's hiring hall is an internal union procedure rather than a collectively bargained term of agreement between Local 334 and employers. (Pet. 16a).

---

[1] The United Association is an international labor organization composed of numerous local unions throughout the United States and Canada.

[2] "J.A." refers to the Joint Appendix filed with the Court.

Employees who complete an apprenticeship program are required to elect a designation of "plumber" or "pipefittter." However, as a combination local, Local 334 has, for years, referred employees to either plumbing or pipefitting jobs without regard to the employees' designation. The 185 members of Local 334 have enjoyed excellent employment opportunities and a lower rate of unemployment than that experienced by members of other New Jersey locals. (J.A. 55, 59, 56).

The relationship between Local 334 and the United Association is governed by the Constitution of the United Association (J.A. 55, 91). Section 86 of the Constitution authorizes the General President of the United Association to consolidate local unions whenever he concludes that "there is a superfluous number of Local Unions in any locality, and that a consolidation would be for the best interest of the United Association. . ." (J.A. 25). In 1977, International Representative Francis Coyne informed various Northern New Jersey local unions that unless they voluntarily merged, the General President would invoke Section 86 to direct consolidation under a plan Coyne would recommend. Pursuant to this directive, in May, 1977, Locals 334, 765, 124 and 49 petitioned the General President for permission to consolidate, with Local 334 as the surviving combination local. The locals never received a response to their proposal. (J.A. 57).

In May, 1977, the General President issued an order to show cause why International Representative Coyne's consolidation proposal should not be implemented under Section 86. On May 10, 1977, Hearing Officer Philip Coyne conducted a hearing, at which Francis Coyne and representatives of nine local unions participated. Local 334 and several other locals objected to the Coyne proposal and reiterated their own proposal for consolidation into combined locals. (J.A. 57, 31-35). Hearing Officer Coyne issued a report recommending that Inter-

national Representative Coyne's proposal be implemented (J.A. 38-40).

On August 4, 1977, General President Martin Ward adopted the findings, conclusions and recommendations of the Hearing Officer and concluded that "there are a superfluous number of local unions in the northern part of New Jersey" and that it would serve the "best interests" of the United Association to order their consolidation, with the consent and approval of the General Executive Board. He ordered the following:

> Consolidation of Fitters Local 765 (Passaic) into Fitters Local 274 (Jersey City) and the transferring of the fitter members of three combination locals, Local 49 (Patterson), Local 334 (Morristown) and Local 523 (Dover) into Fitters Local 274.
>
> Consolidation of Plumbers Local 84 (North Hudson), Plumbers Local 124 (Passaic) and Plumbers Local 326 (Hackensack) into Plumbers Local 14 (Jersey City) and the transferring of the plumber members of three combination local unions, Local 49 (Patterson), Local 334 (Morristown) and Local 523 (Dover) into Plumbers Local 14.
>
> The establishment and chartering of a separate Metal Trades Local 855 for the approximately 1500 metal trades members of Fitters Local 274 who are employed by the New Jersey Public Service Electric and Gas Company.

(J.A. 58, 41-45). Consolidated Locals 334, 49 and 523 were directed to divide their assets on an equitable basis and turn them over to the surviving locals. A "great portion" of the Local 334 property subject to the order of consolidation consisted of real estate. (J.A. 60). Straight line Locals (*i.e.*, those composed only of plumbers or pipefitters) 765, 84, 124 and 326 were directed to transfer their assets to the surviving locals. (J.A. 58, 42-43).

The consolidation order directed the pipefitter members of Local 334 to transfer into Local 274 and the plumber members to transfer into Local 14 (J.A. 42). If the order is implemented, Local 334's members could no longer be referred for work regardless of their classification; rather, they will be required to work under separate local unions divided along craft lines and, therefore, under separate lists as either a plumber or a pipefitter, with no opportunity to interchange (J.A. 59).

B. The Complaint and Amended Complaint in State Court

On August 22, 1977, Local 334 filed a Complaint in the Superior Court of New Jersey, Chancery Division, Morris County. The Complaint alleged that Local 334 had appealed the Order of Consolidation to the General Executive Board, with a request for a stay pending appeal, pursuant to Sections 218, 219 and 222 of the Constitution. Before the General Executive Board responded, International Representative Coyne appeared in Local 334's office and forcibly removed the Local's charter and seal. (J.A. 20)

The Complaint alleged that Section 86 of the Constitution did not permit the *division* of a local union and that the Order of Consolidation is, therefore, in violation of the Constitution. The Complaint further alleged that the Order would cause "substantial and irreparable injury" to Local 334's and its members' property and property rights; and that Local 334 and its members would suffer greater injury from the denial of injunctive relief than the United Association would suffer from the grant of an injunction (J.A. 21).

The Complaint urged the court to maintain the status quo pending the resolution of Local 334's appeal to the General Executive Board; that its seal and charter be returned; that the United Association process the internal appeal; and that the United Association cease

interfering in Local 334's affairs and threatening members and officers with expulsion (J.A. 22).

On August 26, 1977, Local 334 filed an Amended Complaint.[3] The Amended Complaint alleged that the Order of Consolidation was "illegal" under the Constitution because it did not "constitute a consolidation of local unions within the meaning of Section 86" (J.A. 59); that the General President abused his discretion in ordering the consolidation and by failing to specify why Local 334 was "superfluous" and why the "consolidation" was in the "best interests" of the United Association (J.A. 61-63); and that the General Executive Board had failed to process Local 334's appeal and request for a stay (J.A. 64).

The Amended Complaint urged the court to stay the implementation of the Order; to direct the return of Local 334's charter and seal; to direct the cessation of harrassment; to set aside the Order; and to direct the General Executive Board to review and consider Local 334's appeal (J.A. 60-65).

C. Removal to Federal District Court

On August 25, the United Association filed a Petition for removal, pursuant to 28 U.S.C. § 1441, to the United States District Court for New Jersey. The Petition alleged that "the cause of action herein is an action for violation of a contract between labor organizations representing employees in an industry affecting commerce arising under Section 301 of the Labor Management Relations Act of 1947." (J.A. 52-53). Local 334 filed a Motion to Remand, asserting that the action was not governed by Section 301 and that the assertion of jurisdiction would involve needless federal intervention in in-

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[3] Both the Complaint and the Amended Complaint will hereafter be referred to as "the Complaint" unless specified otherwise.

ternal union affairs (J.A. 88-90). The District Court, per Judge Biunno, denied the motion (J.A. 98-99).

Immediately after the case was removed, Local 334 obtained an *ex parte* temporary restraining order enjoining the United Association from enforcing the Order of Consolidation, from treating Local 334 as less than a duly constituted Local Union, and from interfering with Local 334's contracts with employers (J.A. 66-67). After a hearing, Local 334's request for a preliminary injunction was denied, and the temporary restraining order was subsequently dissolved.

After the completion of discovery, the parties filed cross-motions for summary judgment. In a Letter Opinion dated August 17, 1979, the District Court granted the United Association's motion (Pet. 20a). The court ruled that Local 334 had failed to exhaust its internal union remedies. The court also ruled that the United Association was entitled to summary judgment on the merits.

D. The Proceedings in the Court of Appeals

Local 334 filed a timely notice of appeal. The Court of Appeals, *sua sponte*, questioned whether Section 301 provided jurisdiction over the case and requested the parties to submit supplemental briefs on the issue both before and after oral argument. On August 4, 1980, the Court of Appeals issued its decision holding that Section 301 did not provide federal subject matter jurisdiction over the action, vacated the judgment of the District Court, and remanded the case to the District Court with instructions to remand the case to the State Court (Pet. 1a-19a).

On August 20, 1980, the Court of Appeals granted a stay of its mandate pending the United Association's filing of a petition for writ of certiorari.

The United Association's petition was filed on October 31, 1980 and was granted on January 26, 1981.

SUMMARY OF ARGUMENT

Section 301(a) of the Labor Management Relations Act should not be construed to extend federal jurisdiction over a suit alleging a violation of a union constitution. The assertion of jurisdiction over such suits will open a Pandora's box, thereby enmeshing the federal courts in disputes which are within the competence of state courts applying state law. The principle of stare decisis dictates that the Court adhere to its decisions which recognize that Section 301(a) does not provide subject matter jurisdiction to enforce union constitutions.

The legislative histories of the Taft-Hartley Act of 1947 and of the Landrum-Griffin Act of 1959 together demonstrate that Congress did not intend to extend federal jurisdiction over union constitutions in 1947. Accordingly, Section 301(a)'s reference to contracts "between labor organizations" should be limited to agreements between unrelated labor organizations.

If Section 301(a) is construed to permit federal courts to assert jurisdiction over suits alleging a violation of a union constitution, the courts must assert jurisdiction over *all* cases and create a new federal common law which would displace existing state law. Section 301(a) does not provide a basis for the federal courts to assert jurisdiction over some but not all disputes arising under contracts within the meaning of the statute. Section 301(a) grants individuals access to the federal courts to assert their contractual rights, and would provide jurisdiction for suits by members if the statute is interpreted to encompass union constitutions.

On the other hand, if the Court does determine that jurisdiction exists under Section 301(a) for some disputes under union constitutions, the Court should interpret the statute as only applying to internal union disputes which present an actual traumatic impact on labor-

management relations, not a theoretical or potential impact. In this case, the Third Circuit properly concluded that the allegations in the Complaint alleged only a minimal impact on labor relations. Accordingly, even if Section 301(a) is interpreted to extend federal jurisdiction over internal union disputes which have a significant effect on labor peace, this internal union dispute is not sufficient to invoke the jurisdiction of the federal court. Only if the statute is read to encompass any and all disputes under a union constitution can the present case be deemed to present a federal question.

ARGUMENT

I. SECTION 301(A) DOES NOT EXTEND FEDERAL JURISDICTION TO ENCOMPASS DISPUTES ARISING UNDER UNION CONSTITUTIONS

The question of whether Section 301(a) provides subject matter jurisdiction for suits alleging a breach of a union's constitution is not one of first impression in this Court. On three previous occasions, this Court has considered the proper forum for the resolution of disputes arising under the constitution of a national labor organization and, in each case, the Court has held that suits to enforce the provisions of a union constitution are within the competence of state courts applying state laws. *Machinists v. Gonzales*, 356 U.S. 617, 619 (1958); *Motor Coach Employees v. Lockridge*, 403 U.S. 274, 293-297 (1971); *NLRB v. Boeing Co.*, 412 U.S. 67, 76 (1973). In this case, the Court should adhere to its prior rulings under the principle of stare decisis and not "federalize" the resolution of internal union disputes under the construction of Section 301 urged by the United Association.

In *Machinists v. Gonzales*, the Court held that a state court damage action challenging a member's expulsion from a union was not preempted by the National Labor

Relations Act.[4] Gonzales alleged that his expulsion violated the provisions of the union constitution under California law. In holding that his suit for violation of the union constitution could be brought in California state court under state law, the Court said (*supra*, 356 U.S. at 618, 620):

> . . . state law provides, through mandatory reinstatement and damages, a remedy for breach of [a union constitution] through wrongful expulsion . . .
>
> The protection of union members in their rights as members has not been undertaken by federal law, and indeed the assertion of any such power has been denied.

There was no suggestion in *Gonzales* that the alleged breach of a union constitution was cognizable under Section 301(a). If Section 301 had been interpreted to encompass the subject matter of Gonazles' complaint, federal common law rather than California law would have been applied. *Textile Workers v. Lincoln Mills*, 353 U.S. 448, 451 (1957).

Several years later, the Court considered a state court action in which it was alleged that a union violated a provision in its constitution and bylaws by suspending a member and causing an employer to discharge him. Because the complaint alleged no employer breach of the collective bargaining agreement and no union breach of the duty of fair representation, the Court refused to find jurisdiction under Section 301(a)'s provision for suits between an employer and a labor organization. The Court held that the suit was preempted because the misconduct arguably violated §§ 8(a)(3) and 8(b)(2) of

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[4] 29 U.S.C. § 151 *et seq.* Under the preemption theory, the Act preempts the jurisdiction of federal and state courts to regulate conduct which is "arguably subject to § 7 or § 8 of the Act." *San Diego Building Trades Council v. Garmon*, 359 U.S. 236, 245 (1959).

the National Labor Relations Act. *Motor Coach Employees v. Lockridge, supra,* 403 U.S. at 284. In deciding that Lockridge's action was preempted, this Court considered and rejected the argument, made here by the United Association, that Section 301 provides subject matter jurisdiction for suits alleging a breach of the union's constitution. *Id.* at 299-300. Had Section 301 been construed to encompass Lockridge's claim under the union constitution, his suit would not have been preempted. *Id.*; *Dowd Box Co. v. Courtney,* 368 U.S. 502, 513 (1962).

Most recently in *NLRB v. Boeing Co., supra,* the Court reaffirmed that the state law of contracts or of voluntary associations governs a union constitution and held that state courts, rather than the National Labor Relations Board, had jurisdiction to determine the reasonableness of fines imposed on members who violate their union's constitution. *Supra,* 412 U.S. at 76-77. *Boeing* merely reiterated prior decisions of this Court that, "[u]nless the [union constitution] or its enforcement impinges on some policy of federal labor law, the regulation of the relationship between union and employee is a contractual matter governed by local law." *Scofield v. NLRB,* 394 U.S. 423, 426 n.3 (1969).

In the present case, the United Association is asking the Court to disregard these decisions and interpret Section 301 to provide federal jurisdiction for suits alleging violation of a union constitution. This construction of Section 301 would fundamentally alter the relationship between state courts, federal courts and the Board and would require the displacement of state law by a new federal common law. We submit that the prior decisions of this Court are sound and that Section 301 should not be interpreted as providing jurisdiction for the resolution of internal union disputes.

A. By Enacting Section 301(a), Congress Did Not Intend to Extend Federal Jurisdiction to Internal Union Disputes

As unions gained strength under the protections of the Wagner Act, so too did criticism of union power. Twelve years after the passage of the Wagner Act, Congress adopted the Taft-Hartley Act to regulate alleged union misconduct by proscribing certain union unfair labor practices and providing for the enforcement of collective bargaining agreements under Section 301.

Among the most frequently alleged union abuses at the time the Taft-Hartley Act was enacted was the violation of collective bargaining agreements. A provision in the Senate bill which made the violation of "the terms of an agreement to submit a labor dispute to arbitration" an unfair labor practice was deleted from the final version of the bill.[5] The Conference Report stated that "[o]nce the parties have made a collective bargaining contract the enforcement of that contract should be left to the usual process of the law and not to the National Labor Relations Board." [6] Accordingly, Congress enacted Section 301(a) which provided that:

> *Suits for violation of contracts* between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or *between any such labor organizations*, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties. [Emphasis supplied]

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[5] S.1126, 80th Cong., 1st Sess. §§ 8(a)(6), 8(b)(5); see S. Rep. No. 105, 20-21, 23. I Legislative History of the Labor Management Relations Act of 1947, 111, 114, 426-427, 429. (Hereinafter cited as "Legislative History (1947)"). The House bill contained a similar provision. H.R. 3020, § 2(11); see H.R. Rep. No. 245, 21. I Legislative History 36-37, 312 (1947).

[6] H.R. Conf. Rep. No. 510, 42. I Legislative History 546 (1947).

The legislative history of the clause "or between any such labor organizations," which was inserted in Conference (*Retail Clerks v. Lion Dry Goods, Inc.*, 369 U.S. 17, 26 (1962)), is nonexistant. The Conference Report provides no explanation for this amendment.[7] "The most that can be said with certainty is that Congress did not anticipate the problem" of whether Section 301 provides federal jurisdiction for suits to enforce the provisions of a union constitution. *Parks v. IBEW*, 314 F.2d 886, 91[illegible] (4th Cir. 1963), *cert. denied*, 372 U.S. 976.

The solution to this "problem" cannot be found in a literal reading of the statute. "The general term 'contract' is meaningless in the abstract unlimited sense since . . . such a huge panoply of relationships can conceivably be comprehended by the word." *Local Union No. 657, United Brotherhood of Carpenters v. Sidell*, 552 F.2d 1250, 1252 (7th Cir. 1977), *cert. denied*, 434 U.S. 862. It would thus be "highly unrealistic to regard [the word 'contract'] as precisely and unambiguously covering" the terms of a union constitution. Compare *NLRB v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175, 179 (1967). As the Court has previously determined, "the implications of [the word 'contract' in Section 301] must be determined from the connection in which it appears." *Retail Clerks v. Lion Dry Goods, Inc., supra*, 369 U.S. at 28. Because union constitutions can only be considered "contracts between labor organizations" by implication from the statute,[8] the Court must look to the legislative

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[7] H.R. Conf. Rep. No. 510, 65-66. I Legislative History 569-570 (1947); II Legislative History 1543 (1947).

[8] While the point is by no means dispositive, had Congress intended in 1947 to make the provisions of a union's constitution enforcable in federal court, it could easily have done so explicitly. *Smith v. United Mine Workers*, 493 F.2d 1241, 1243-1244 (10th Cir. 1974). Indeed, as discussed *infra*, Congress did just that, in limited respect, by enacting the Landrum-Griffin Act twelve years later.

history of Section 301(a) and of the Taft-Hartley Act generally for guidance in determining the congressional purpose, which "is the ultimate touchstone" for resolving this issue. *Retail Clerks v. Schermerhorn*, 375 U.S. 96, 103 (1963).[9]

The legislative history of Section 301 does not support the inclusion of union constitutions among "contracts between labor organizations."[10] Congress' "principal mo-

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[9] Even if "contracts between labor organizations" could be "literally" read to include union constitutions, the issue would not be resolved. The "familiar rule that a thing may be within the letter of the statute and yet not within the statute because not within its spirit, nor within the intention of its makers" (*Holy Trinity Church v. United States*, 143 U.S. 457, 459 (1892)) has particular application to interpretation of labor legislation which is "to a marked degree, the result of conflict and compromise between strong contending forces and deeply held views on the role of organized labor in the free economic life of the Nation . . . ." *National Woodwork Mfrs. Assn. v. NLRB*, 386 U.S. 612, 619 (1967); *Wirtz v. Local 153, Glass Bottle Blowers Assn.*, 389 U.S. 463, 468 (1968); *Muniz v. Hoffman*, 422 U.S. 454, 469-470 (1957); *NLRB v. Allis-Chalmers Mfg. Co., supra*, 388 U.S. at 179.

The Court of Appeals expressly declined to consider whether "a union constitution, a local union charter, or a combination of both" could constitute a "contract" within the meaning of Section 301(a). (Pet. 11a, n. 13). This omission was based on its assumption that the statute did provide jurisdiction *if* the amended complaint satisfied the "significant impact" test. The United Association had urged just this assumption.

[10] It is at least arguable that a union constitution is not a "contract between labor organizations." In 1947, "Congress was operating within the context of the 'contract theory' of the union-member relationship which widely prevailed at the time." *NLRB v. Allis-Chalmers Mfg. Co., supra*, 388 U.S. at 192. Under that theory, the constitution contains a contract between the members *inter se*, between each member and the union *and* between the various bodies of the union. *See, e.g., Harris v. Geier*, 112 N.J. Eq. 99, 104-105, 164 A. 50, 52 (Ch. 1932). *See also Machinists Lodge 405 v. NLRB*, 412 U.S. 84, 88 (1973); *NLRB v. Granite State Joint Board*, 409 U.S. 213, 217 (1972). The United Association overemphasizes

tive" in enacting Section 301, to provide a forum for the enforcement of collective bargaining agreements (*Dowd Box v. Courtney, supra*, 368 U.S. at 510), did not apply to union constitutions because, as the United Association correctly recognizes (Br. at 18, n. 12), state courts were generally available in 1947 to enforce the provisions of a union constitution.[11] In contrast to collective bargaining agreements, the enforceability of a union constitution was "not a part or parcel of the abuses against which" Section 301 was aimed. *Textile Workers v. Lincoln Mills, supra*, 353 U.S. at 458.[12] Moreover, the avail-

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(Br. at 15-17) the Court's references to a union constitution as "the fundamental agreement of association" (*Coronado Coal Co. v. United Mine Workers*, 268 U.S. 295, 304 (1925)), for the Court spoke of an "association of men" rather than an association of intermediate bodies. The Court can reasonably conclude that in 1947 Congress considered a union constitution primarily to be a contract between members and their union and only secondarily to be a contract between affiliated bodies of a labor organization, and, therefore, not as a "contract between labor organizations."

[11] Before 1947, union constitutions were enforceable in at least forty-five of the forty-eight state courts under at least one of several theories. Decisions from these state courts are listed in the Supplemental Appendix. These theories underlying state court enforcement of union constitutions are discussed in Chafee, *The Internal Affairs of Associations Not for Profit*, 43 HARV. L. REV. 993 (1930); Summers, *Legal Limitations on Union Discipline*, 64 HARV. L. REV. 1049 (1951); Note, *Judicial Control of Actions of Private Associations*, 76 HARV. L. REV. 983 (1963).

[12] In *Lincoln Mills, supra*, 353 U.S. at 454, the Court quoted the following portion of the Senate Report:

> If unions can break agreements with relative impunity, then such agreements do not tend to stabilize industrial relations. The execution of an agreement does not by itself promote industrial peace. The chief advantage which an employer can reasonably expect from a collective labor agreement is assurance of uninterrupted operation during the term of the agreement. Without some effective method of assuring freedom from economic warfare for the term of the agreement, there is

ability of state courts to hear and resolve disputes under union constitutions seriously undermines any contention that parallel federal jurisdiction need be asserted by the Court on policy grounds.[13]

The overall legislative history of the Taft-Hartley Act refutes the argument that Section 301 encompasses a union constitution.[14] The 80th Congress clearly did not

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little reason why an employer would desire to sign such a contract.

I Legislative History 422 (1947). As the Chafee and Summers articles suggest, there was no corresponding indication that unions violated their constitutions "with relative impunity."

[13] Although the United Association's motives for removing the case from state to federal court are neither self evident nor relevant, the United Association cannot argue that New Jersey courts do not provide an adequate forum. In the past, the New Jersey state courts have provided a sympathetic forum for resolving disputes arising under the United Association constitution. In *Local 14, Plumbers v. United Association*, 61 N.J. Super. 228, 160 A.2d 664 (App. Div. 1960), the court dismissed a similar action on the ground that the complaining local had failed to exhaust its internal union remedies. The United Association raised this same defense before the District Court below.

[14] The United Association's suggestion that the Court ignore the relationship between Section 301 and Section 8 (Br. at 21-22, n. 15) is both disingenuous and meretricious. The United Association acknowledges, as it must, that crucial definitions for Title III (Section 301) appear in Title I of the Taft-Hartley Act. More importantly, the Court has frequently considered the legislative history of Section 8 while interpreting Section 301. *Retail Clerks v. Lion Dry Goods, Inc.*, 369 U.S. 17, 29 (1962); *Arnold Co. v. Carpenters District Council*, 417 U.S. 12, 17-18 (1974); *Howard Johnson Co. v. Detroit Joint Board*, 417 U.S. 249, 256 (1974) ("It would be plainly inconsistent . . . to say that the basic policies found controlling in an unfair labor practice context may be disregarded by the courts in a suit under § 301, and thus to permit the rights . . . to depend upon the forum in which the Union presses its claims."). *Cf. NLRB v. Rockaway News Supply Co.*, 345 U.S. 71, 80 (1953); *Mastro-Plastics Corp. v. NLRB*, 350 U.S. 270, 279-284 (1956).

intend to intervene in the internal affairs of labor unions. Even a cursory review of the legislative history of the provisos to Section 8(a)(3)[15] and 8(b)(1)(A),[16] and Section 8(b)(2)[17] reveals "that Congress expressly disclaimed . . . any intention to interfere with union self-government or to regulate a union's internal affairs." *NLRB v. Allis-Chalmers Mfg. Co., supra,* 338 U.S. at 184. For example, Senator Ball, who introduced the proviso to Section 8(b)(1)(A), told his colleagues that "[i]t was never the intention of the sponsors of the pending amendment to interfere with the internal affairs or organization of unions." II Legislative History 1141 (1947). Senator Taft stated that the bill was not designed to "tell unions how they shall vote or how they shall conduct their affairs. . ." *Id.* at 1030. The Court cannot assume that Congress implicitly authorized the federal judiciary to intrude into internal union affairs when it so explicitly denied such authority for the National Labor Relations Board.

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[15] . . . *Provided further,* That no employer shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership.

[16] . . . *Provided,* That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein.

[17] . . . (2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership.

The subsequent passage of the Landrum-Griffin Act in 1959 confirms "that union self-government was not regulated in 1947." *NLRB v. Allis-Chalmers Mfg. Co., supra,* 388 U.S. at 194.[18] The 1959 Act, which was "the *first* comprehensive regulation . . . of internal union affairs" (*Id.* at 193, emphasis supplied), reflected Congress' "long-standing policy against unnecessary intrusion into internal union affairs." *Wirtz v. Local 158 Glass Bottle Blowers Ass'n.*, 389 U.S. 463, 470-471 (1968). Congress intended to allow "unions great latitude in resolving their own internal controversies" (*Calhoon v. Harvey*, 379 U.S. 134, 140 (1964)) without unwarranted interference by the federal judiciary. *Boilermakers v. Hardeman*, 401 U.S. 233, 243-245 (1971).

The competence of state courts to interpret union constitutions was expressly preserved by Sections 103, 403 and 603(a) of the Landrum-Griffin Act. 29 U.S.C. §§ 413, 483, 523(a). Section 103 provides that pre-existing state laws are not affected by Title I of the Act, the Bill of Rights of union members.[19] Similarly, Section 403 prescribes that "[e]xisting rights and remedies to enforce the constitution and bylaws of a labor organization with respect to elections prior to the conduct thereof shall not be affected by" Title IV, which regulates internal union elections. Section 403 thus specifically al-

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[18] Although courts are reluctant to infer legislative history from the actions of subsequent legislatures, as this Court has observed, courts "may properly take into account the later (Landrum-Griffin) Act when asked to extend the reach of the earlier (Taft-Hartley) Act's vague language to the limits which, read literally, the words might permit." *NLRB v. Drivers Local Union*, 362 U.S. 274, 291-292 (1960); *NLRB v. Allis-Chalmers Mfg. Co., supra*, 388 U.S. at 194.

[19] Senator Morse and Representative Teller both expressed opposition to the Congressional refusal to preempt state law. II Legislative History of the Labor-Management Reporting and Disclosure Act of 1959, 1415, 1624.

lows for suits in state courts to enforce rights granted by union constitutions.[20] Finally, Section 603(a) prescribes that, unless expressly provided otherwise, the Act was not intended to "take away any right or bar any remedy to which [union members] are entitled under such other Federal law or law of any state." The federal laws preserved under the Landrum-Griffin Act were the Railway Labor Act,[21] the Civil Rights Acts of 1964 and 1866,[22] and those provisions of the Taft-Hartley Act which were to be enforced by the National Labor Relations Board.[23] There is no judicial or legislative indication that Congress recognized the existence, much less intended to preserve, any federal law with respect to enforcement of union constitutions under Section 301.

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[20] *Trbovich v. Mine Workers*, 404 U.S. 528, 533 n. 6 (1972); *Libutti v. DiBrizzi*, 343 F.2d 460, 461 (2d Cir. 1965); *Rota v. BRAC*, 489 F.2d 998, 1004 (7th Cir. 1973) (Judge, now Justice, Stevens), *cert. denied*, 414 U.S. 1144, *on remand*, 64 F.R.D. 699, 704 (N.D. Ill. 1974); *Calhoon v. Harvey*, 379 U.S. 134, 145-146 (1964) (Stewart, J., concurring); *Colpo v. Highway Truck Drivers Local 107*, 201 F.Supp. 307, 312-313 (D. Del. 1961), *vacated as moot*, 305 F.2d 362 (3d Cir. 1962), *cert. denied*, 371 U.S. 890; *Printing Specialties District Council No. 2 v. Int'l Printing and Graphic Communications Union*, 466 F.Supp. 13, 14-16 (E.D. Tenn. 1978). *See also* Note, *Union Elections and the LMRDA: Thirteen Years of Use and Abuse*, 81 YALE L. J. 407, 555 (1972).

[21] *Adamszewski v. Machinists Lodge 1487*, 496 F.2d 777, 784-785 (7th Cir. 1974).

[22] *Tucker v. Tobacco Workers Local 183*, 488 F.2d 76, 78 (4th Cir. 1973).

[23] *Fulton Lodge 2, Machinists v. Nix*, 415 F.2d 212, 215-216 (5th Cir. 1969); *Boilermakers v. Braswell*, 388 F.2d 193, 195-196 (5th Cir. 1968); *Parks v. IBEW*, 314 F.2d 886, 922 (4th Cir. 1963); *Rekant v. Shochtay-Gasos Union*, 320 F.2d 271, 274-275 (3d Cir. 1963); *Machinists v. King*, 335 F.2d 340, 346-347 (9th Cir. 1964), *cert. denied*, 379 U.S. 920; *McDonald v. Oliver*, 525 F.2d 1217, 1230-1231 (5th Cir. 1976). *See also NLRB v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175, 214 n. 23 (1967) (Black, J., dissenting).

To the contrary, the provisions of the 1959 Act were designed to protect *state* law with regard to interpretation of union constitutions. *Boilermakers v. Hardeman, supra*, 401 U.S. at 244 n. 11; *Tomko v. Hilbert*, 288 F.2d 625, 629 (3d Cir. 1961); *Underwood v. Maloney*, 256 F.2d 334 (3d Cir. 1957), *cert. denied*, 358 U.S. 864; *Carroll v. Musicians*, 235 F.Supp. 161, 174 (S.D.N.Y. 1963).[24]

Thus, although the legislative history of Section 301 (a) may not expressly provide a definitive basis for excluding disputes arising under union constitutions, the legislative history of the Taft-Hartley and Landrum-Griffin Acts, considered together, make clear that Section 301(a) was not intended to provide federal jurisdiction over a "dispute between a parent union and a local union over the meaning and effect of the union constitution." *Smith v. United Mine Workers*, 493 F.2d 1241, 1243 (10th Cir. 1974).[25] To interpret Section 301 as encompassing union constitutions would not serve any of the Congressional policies underlying Section 301(a), would run counter to the overall legislative scheme of the Taft-Hartley Act, and, finally, would require the Court to find that "Congress preceded the Landrum-Griffin amendments with an even more pervasive regulation of the internal affairs of unions." *NLRB v. Allis-Chalmers Mfg. Co., supra*, 388 U.S. at 183.

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[24] Justice White, dissenting in *Motor Coach Employees v. Lockridge*, 403 U.S. 274, 322 (1971), wrote that under Sections 103 and 603(a) "any parallel rights created by the States, either directly or *indirectly through enforcement of union constitutions or bylaws*, were to stand at full strength." (Emphasis supplied)

[25] *See also Petitioners of Local 390, IBEW v. IBEW*, 391 F.2d 914 (5th Cir. 1968); *Snoots v. Vejlupek*, 87 F.Supp. 503, 504 (N.D. Ohio 1949); *Kriss v. White*, 87 F.Supp. 734, 735 (N.D. N.Y. 1949).

B. The Exclusion of Union Constitutions Does Not Negate the "Contracts Between Labor Organizations" Provision of Section 301(a)

To read Section 301 as not encompassing union constitutions does not negate any portion of the statute nor violate the well-accepted rule of construction that a statute should be interpreted to give effect to all of its provisions. *Reiter v. Sonotone Corp.*, 442 U.S. 330, 338-339 (1979); *FAA Administrator v. Robertson*, 422 U.S. 255, 261 (1975). Whatever decision the Court renders in this case, Section 301(a) will continue to provide a jurisdictional basis for the enforcement of a variety of contracts or agreements between *unrelated* labor organizations: no raid agreements,[26] jurisdictional dispute resolution agreements,[27] merger or affiliation agreements,[28] and promissory notes on loans between previously unrelated organizations.[29] These contracts can be included within Section 301 without doing harm to the Congressional policy of noninterference with internal union affairs because the parties to these contracts are not a parent and local bodies within the same labor organization. *Smith*

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[26] *Firemen and Oilers v. Machinists*, 338 F.2d 176 (5th Cir. 1964); *United Textile Workers v. Textile Workers Union*, 258 F.2d 743 (7th Cir. 1958); *Abrams v. Carrier Corp.*, 434 F.2d 1234 (2d Cir. 1970), *cert. denied*, 401 U.S. 1009.

[27] *Drywall Tapers, Local 1974 v. Operative Plasterers*, 537 F.2d 669 (2d Cir. 1976); *Drywall Tapers v. Operative Plasterers*, 601 F.2d 675 (2d Cir. 1979), *cert. denied*, 444 U.S. 1073; *Local 33 Hod Carriers v. Mason Tenders*, 291 F.2d 496 (2d Cir. 1961); *Lumber Workers v. Millmen's Local*, 169 F.Supp. 765 (N.D. Cal. 1958); *Santos v. District Council, Carpenters*, 547 F.2d 197 (2d Cir. 1977).

[28] *Durkin v. Murray*, 90 F.Supp. 367 (D. D.C. 1950); *Mine Workers v. District 50*, 298 F.Supp. 1262 (D. D.C. 1969), *rev'd*, 435 F.2d 421 (D.C. Cir. 1970), *cert. denied*, 402 U.S. 906; *Local 1, Teamsters v. Teamsters*, 419 F.Supp. 263 (E.D. Pa. 1976).

[29] *Mine Workers v. District 50, supra.*

v. United Mine Workers, supra. Disputes arising under these contracts are, by definition, not *internal* union matters.

C. Section 301(a) Provides No Basis for Extending Federal Jurisdiction To Some, But Not All, Disputes Arising Under Union Constitutions

As the United Association properly argues, if Section 301(a) were intended by Congress as a grant of federal jurisdiction over suits under union constitutions, the Federal judiciary must assert jurisdiction. *Harrison v. PPG Industries, Inc.*, 446 U.S. 578, 592-594 (1980); *Cohens v. Virginia*, 6 Wheat (19 U.S.) 264, 403 (1821). If the "contracts between labor organizations" provision is interpreted to include union constitutions, Section 301 must encompass all disputes arising under the constitutions of labor organizations representing employees in an industry "affecting commerce." See *Smith v. Evening News Association*, 371 U.S. 195, 199-200 (1962); *Textile Workers v. Lincoln Mills*, 353 U.S. 448, 456-457 (1957). Any grant of jurisdiction under Section 301 to encompass union constitutions would necessarily be broad in the absence of any apparent basis in the statutory language or in its legislative history for differentiating among suits to enforce Section 301 contracts. See Note, *Applying the "Contracts Between Labor Organizations" Clause of Taft-Hartley Section 301: A Plea for Restraint*, 69 YALE L. J. 299 (1959).

1. *Section 301 Would Confer Jurisdiction Over Suits Between Individual Members and Their Union Concerning the Interpretation of its Constitution*

Section 301(a) cannot be construed to permit only suits between national unions and their locals for violation of the national constitution. While the United As-

sociation does not squarely address this point,[30] the assertion of federal jurisdiction over suits for violation of a union constitution would necessarily provide jurisdiction for suits by or against individual members. This Court has already rejected the argument that Section 301 permits only suits by parties to the contract. *Smith v. Evening News Association, supra*, 371 U.S. at 198-200. Thus, an individual employee can sue to vindicate personal contractual rights which, by definition, "are to a large degree inevitably intertwined with union interests and many times precipitate grave questions concerning the interpretation and enforceability of the [Section 301(a) contracts] on which they are based." *Id.* at 200. An individual member's right to sue under a union constitution is even clearer because the member is actually a party to the contract. As the Court has stated, "membership in a labor union constitutes a contract between the member and the union, the terms of which are governed by the constitution and bylaws of the union." *Machinists v. Gonzales, supra*, 356 U.S. at 618.

Under this Court's interpretation of Section 301(a), no viable distinction can be drawn permitting employee suits against employers but precluding member suits against unions.[31] The majority of lower courts which

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[30] The United Association never explicitly states that suits by members are not permitted by Section 301(a). Yet by stating that there have been "less than fifty" suits between national unions and their locals (Br. at 23), it either understates the impact its position would have on the federal judicial system or implies that Section 301(a) would not support a suit between a member and a union. *See, e.g., Vincent v. Plumbers Local 198*, 384 F.Supp. 1379, 1381, 1384 (D. La. 1974).

[31] The suggestion in *Motor Coach Employees v. Lockridge*, 403 U.S. 274, 301 (1971), that "the principle of *Smith v. Evening News* is applicable only to those disputes governed by the terms of the collective bargaining agreement" cannot be taken out of context to preclude suits by members against their unions. In *Lockridge* and *Smith*, the Court "exempted § 301 suits from the *Garmon*

have considered the issue have interpreted Section 301 to permit member suits if other requirements are met. *Alexander v. Operating Engineers*, 624 F.2d 1235, 1238 (5th Cir. 1980); *Stelling v. IBEW Local 1547*, 587 F.2d 1379, 1382-1383 (9th Cir. 1978);[32] *Santos v. District Council Carpenters*, 547 F.2d 197, 200 n.3 (2d Cir. 1977); *Abrams v. Carrier Corp.*, 434 F.2d 1234, 1248-1249 (2d Cir. 1970), *cert. denied*, 401 U.S. 1009. As the Ninth Circuit stated in *Stelling*, "jurisdiction [under Section 301(a)] depends on the nature of the action rather than the status of the parties." *Supra*, 587 F.2d at 1383.

2. *Section 301(a) Provides No Basis for Differentiating Among Suits on the Basis of Their Impact Upon Labor-Management Relations*

The circuit courts have examined suits for violation of a union constitution under Section 301 to determine whether the dispute had a "significant impact" upon labor-management relations. See, *infra*, pp. 30-31. However, the established construction of the statute provides no basis for limiting Section 301 jurisdiction to those disputes having a "significant impact on labor-management relations." Congress expressly provided that "the amount in controversy" was irrelevant in Section 301 cases (29 U.S.C. § 185(a); *Textile Workers v. Lincoln Mills*, *supra*, 353 U.S. at 450), and this Court has held that because

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[preemption] principle." *Id.* at 300. But if Section 301 encompasses suits for violation of union constitutions, *Lockridge* cannot be construed as a limitation on the right of members to utilize the Section.

[32] In this respect, at least, *Stelling* overrules *Hotel and Restaurant Employees, Local 400 v. Svacek*, 431 F.2d 705, 706 (9th Cir. 1970). The only other circuit court case asserting this position, *Adams v. Boilermakers*, 262 F.2d 835, 838 (10th Cir. 1958), was decided before *Smith v. Evening News Ass'n*, *supra*, and is, therefore, of questionable precedential value.

the "processing of even frivolous claims may have therapeutic values," lower courts should not consider the merits of the dispute in a Section 301 action to compel arbitration. *Steelworkers v. American Mfg. Co.*, 363 U.S. 564, 568 (1960). The essence of both the Congressional and the judicial reasoning is that the execution of a Section 301(a) contract *itself* promotes industrial stability and that Section 301 permits the resolution of *all* disputes arising under such contracts in federal court.

The statute, as written and as presently construed, does not permit the assertion of jurisdiction over some, but not all, disputes under union constitutions. If a union constitution is a "contract" under Section 301, the Court must either assert pervasive federal jurisdiction over all internal union disputes, contrary to the clear Congressional policy in 1947, or distinguish among disputes arising under the "contract," contrary to both the plain and unconditional language of the statute and its legislative history requiring that Section 301 be "liberally" construed.

Furthermore, the "significant impact" test urged by the United Association—whether the dispute affects the identity of the union party or parties to negotiations and agreements with employees (Br. at 26)—would directly intrude upon the primary jurisdiction of the National Labor Relations Board. Where the unions, employers and employee/members do not contest the international's consolidation of local unions, there is no dispute within the meaning of Section 301. But if an employer refused to recognize the bargaining agent designated by the national union, the union would be required to invoke the processes of the Board in order to confirm its status. See, *e.g.*, *American Bridge Div., U.S. Steel Corp. v. NLRB*, 457 F.2d 660 (3d Cir. 1972); *Factory Services, Inc.*, 193 NLRB 722 (1971). And dissatisfied employees might

also invoke the Board's jurisdiction to protest the change in bargaining agent. *Cf. Dycus v. NLRB*, 615 F.2d 820 (9th Cir. 1980). In either situation, the Board's primary jurisdiction supercedes that of the courts. See, *e.g., Carey v. Westinghouse Electric Corp.*, 375 U.S. 261, 272 (1964); *Local 1547, IBEW v. Local 959, Teamsters*, 507 F.2d 872, 877 (9th Cir. 1974); *Baker v. Communications Union Local 6*, 628 F.2d 156, 164 (D.C. Cir. 1980). Thus, under the United Association's theory, as the impact of a dispute upon labor-management relations becomes more severe, it becomes increasingly likely that judicial interpretation of a union constitution will *not* resolve the dispute. Surely Congress could not have intended to provide federal jurisdiction for those internal union disputes that the federal courts were least likely to resolve and over which the Board could assert primary jurisdiction.

3. *The Federalization of Existing State Law Which Would Be Caused By Extension of Jurisdiction Under Section 301 Is Unwarranted and Will Not Create Uniformity*

Section 301 authorizes "federal courts to fashion a body of federal law" for the enforcement of contracts within the meaning of the statute. *Textile Workers v. Lincoln Mills, supra*, 353 U.S. at 451. "[T]he substantive law to apply in suits under § 301(a) is federal law, which the courts must fashion from the policy of our national labor laws." *Id.* at 456. State law "may be resorted to in order to find the rule that will best effectuate federal policy . . . ," but "state law . . . will be absorbed as federal law and will not be an independent source of private rights." *Id.* at 457. Accord, *Teamsters Local 174 v. Lucas Flour Co.*, 369 U.S. 95, 102-103 (1962); *Dowd Box Co. v. Courtney, supra*, 368 U.S. at 511; *Automobile Workers v. Hoosier Cardinal Corp.*, 383 U.S. 696, 705-706 (1966). Extension of federal juris-

diction under Section 301(a) to disputes arising under union constitutions would necessitate the displacement of state law by a federal common law interpreting union constitutions. *Parks v. IBEW*, *supra*, 314 F.2d at 903-904. Of course, in 1947 and again in 1959, Congress took great care *not* to preempt state laws concerning internal union affairs. *Supra*, pp. 14-20.

The displacement of state law by federal common law might, at first glance, appear to provide support for the United Association's position. It could be argued that federal preemption of the laws applicable to union constitutions would result in uniformity of interpretation and that the United Association, like all national unions, has a legitimate and substantial interest in a uniform judicial interpretation of its constitution, which should mean the same thing in Kansas as in New York.[33]

But federal preemption under Section 301(a) is not necessary to achieve uniformity. State courts have traditionally provided substantial uniformity by recognizing the principal of judicial deference to an interpretation fairly placed upon union rules by the union's authorized officials. *Louisville & Nashville R. Co. v. Miller*, 219 Ind. 389, 38 N.E.2d 239, 241 (1941), *cert. denied*, 317 U.S. 644.[34] Such deference, when accompanied by the state courts' recognition of the requirement of exhaustion of internal union remedies,[35] provides substantial uniform-

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[33] Even Section 301, however, cannot ensure that the constitution will mean the same thing in Canada as in the United States. *See Pawlak v. Greenawalt*, 628 F.2d 826, 831 (3d Cir. 1980), *cert. denied*, —— U.S. ——.

[34] Decisions of thirty-five state courts recognizing the doctrine of judicial deference to a union's interpretation of its own constitution are listed in the Supplemental Appendix. No state court decision rejecting this doctrine was found.

[35] Decisions of thirty-seven state courts adopting the requirement of exhaustion of internal union remedies are listed in the Supplemental Appendix. No state court decision rejecting this requirement was found.

ity under state law without sacrificing the local values this Court has always upheld. *Machinists v. Gonzales*, *supra*, 356 U.S. at 620; *NLRB v. Boeing Co.*, *supra*, 412 U.S. at 77.[36]

Moreover, if the Court adopts a "significant impact test," the development of a new federal common law "will [not] necessarily result in greater uniformity in this area even if uniformity is thought to be a desirable goal." Since state courts will have jurisdiction to interpret union constitutions, the development of a federal common law "might well yield a conflict when the two forums are called upon to interpret the same [constitutional provision]." *Id.* at 77-78.[37] The Court could avoid

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[36] Uniformity is not essential in union fine cases, for the reasonableness of a fine depends upon an analysis of the facts in each case: the amount of the fine, the nature of the violation, and the benefit to the member who violated the union rule. See cases cited in *Boeing Co.*, *supra*, 412 U.S. at 76-77, nn. 12-13. The assertion of jurisdiction would implicitly overrule *Boeing Co.* and *Hotel & Restaurant Employees, Local 400 v. Svacek*, 431 F.2d 705 (9th Cir. 1970), and permit unions to collect fines in federal court. A creative union could use the federal courts as a small claims court to collect dues, fees and fines from recalcitrant members.

State courts have also asserted the state's interest to control the disposition of a local's property upon its disaffiliation from its parent union. *See, e.g.*, Greenberg, *Disposition of Union Assets Upon Disaffiliation*, 33 TEMPLE L. Q. 152 (1960); Note, *Rights to Local Union Property After Secession*, 58 YALE L. J. 1171 (1949).

[37] A number of problems are self evident. If only the merger and trusteeship provisions of union constitutions raise issues cognizable under Section 301, then some portions of the constitution would be governed by federal law while others would be governed by state law. No other Section 301 "contract" presents such a schizophrenic picture. If the courts must undertake a case-by-case analysis of the complaint before asserting jurisdiction, there will be no uniformity. Consider, for example, the consequences of adopting a "significant impact" test for determining jurisdiction under Section 301. If such impact is found to exist, the constitution will be interpreted under federal law. If such impact is not

this problem by holding that the federal common law controls every dispute over a union constitution but that federal courts have jurisdiction over only certain cases.[38] But Congress has expressly extended federal court jurisdiction to all suits under Section 301 "contracts." The Court cannot now create arbitrary distinctions to extend the principle of federalization but, at the same time, bar access to the federal judiciary. Contrast *Smith v. Evening News Assn., supra,* with *Assn. of Westinghouse Salaried Employees v. Westinghouse Corp.*, 348 U.S. 437 (1955).

The reasonable solution to this potential morass is to leave the resolution of disputes arising under union constitutions to state courts applying state law. *Machinists v. Gonzales, supra,* 356 U.S. at 618; *NLRB v. Allis-Chalmers Mfg. Co., supra; Scofield v. NLRB, supra,* 394 U.S. at 426 n.3; *Motor Coach Employees v. Lockridge, supra,* 403 U.S. at 296; *NLRB v. Boeing Co., supra,* 412 U.S. at 75-76. As Judge Friendly stated, concurring in *Local 33, Hod Carriers v. Mason Tenders,* 291 F.2d 496, 507 (2d Cir. 1961):

> we ought not to push the language of the second clause of § 301(a) to its ultimate possible reach but rather should construe it not to cover a dispute between units of the same union arising solely out of a union custom or constitution; I would limit the jurisdictional grant to cases where the plaintiff al-

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found to exist, the *very same provision* of the union constitution will be construed under state law. Every clause in a union constitution should be enforceable under one system of law: the law of the state in which the dispute arose.

[38] State courts have jurisdiction to enforce federal law. *Dowd Box Co. v. Courtney, supra.* And Congress has specifically provided that the amount in controversy does, in certain cases, determine the existence of federal jurisdiction. 28 U.S.C. §§ 1331-1332, 1335.

leges a text, bargained between itself and another labor organization, of definite content and tenor. The box that Congress opened need not become Pandora's unless courts make it so.

We therefore urge the Court to conclude that a union constitution is not a "contract between labor organizations" within the meaning and intent of Section 301(a).

II. IF SECTION 301(a) PROVIDES JURISDICTION FOR SOME, BUT NOT ALL, DISPUTES ARISING UNDER A UNION CONSTITUTION, JURISDICTION SHOULD EXTEND ONLY TO DISPUTES WHICH ACTUALLY THREATEN LABOR PEACE

A. Section 301 Jurisdiction Should Be Extended Only Where "Significant to the Maintenance of Labor Peace"

Assuming, *arguendo*, that Congress intended to provide jurisdiction under Section 301 to resolve at least some disputes arising under a union constitution, the only discernible basis for extending jurisdiction under Section 301 is Congress' determination to provide a federal forum for enforcement of agreements "significant to the maintenance of labor peace." *Retail Clerks v. Lion Dry Goods, Inc.*, 369 U.S. 17, 28 (1962); *United Textile Workers v. Textile Workers Union*, 258 F.2d 743 (7th Cir. 1958). Deference to the Congressional policy of noninterference with internal union affairs requires that if Section 301 jurisdiction is extended to disputes arising under union constitutions, jurisdiction be asserted *only* where the dispute involves an *actual* threat to industrial peace. Only then might the union constitution "or its enforcement [impinge] on some policy of federal labor law . . ." *Scofield v. NLRB*, *supra*, 394 U.S. at 426, n.3.

Contrary to any impression which might be drawn from the United Association's brief (Br. at 13-21), the

great weight of lower court authority supports this restrictive construction of the statute. Indeed, the seminal Fourth Circuit decision in *Parks v. IBEW* itself can fairly be read to restrict jurisdiction along these lines. The court in *Parks* "fully recognize[d] its weighty obligation not to expand this initial grant of jurisdiction into a carte blanche for unrestrained judicial inventiveness in the areas of union structure and collective bargaining policy" (*supra*, 314 F.2d at 917) and further noted that the particular dispute before it, which centered upon a strike in violation of the union constitution, had "traumatic industrial and economic repercussions." *Id.* at 916. Many of the circuit court decisions interpret the *Parks* decision in this light and extend Section 301 jurisdiction *only* where internal union disputes have such "traumatic industrial and economic repercussions." *Alexander, supra*, 624 F.2d at 1238; *Studio Electrical Technicians Local 728 v. International Photographers of the Motion Picture Industries Local 659*, 598 F.2d 551, 553 (9th Cir. 1979); *1199 D.C., National Union of Hospital and Health Care Employees v. National Union of Hospital and Health Care Employees*, 533 F.2d 1205, 1207-1208 (D.C. Cir. 1976). Other courts have applied a similarly restrictive standard under Section 301. *Baker, supra*, 628 F.2d at 163-164; *Trail v. International Brotherhood of Teamsters*, 542 F.2d 961, 966-968 (6th Cir. 1976); *Smith v. United Mine Workers, supra*, 493 F.2d at 1242-1244; *Hotel & Restaurant Employees Local 400 v. Svacek*, 431 F.2d 705, 706 (9th Cir. 1970).

This narrow extension of Section 301 jurisdiction would serve the salutary purpose of minimizing interference by the federal judiciary in internal union affairs, allowing federal courts to review the pleadings and weed out the "intraunion squabble" (*Alexander, supra*, 624 F.2d at 1239) which presents no more than a "specula-

tive" threat to industrial peace (*Studio Electrical Technicians, Local 728, supra*, 598 F.2d at 554) or a "bald conclusion unsupported by any factual allegation to give it substance." *1199 D.C., supra*, 533 F.2d at 1208, n.1. Section 301 jurisdiction would thereby be reserved for those suits under union constitutions which raise "concrete allegations of actual threats to industrial peace." *Id.*

B. The Court Below Properly Declined To Assert Jurisdiction Over This Internal Union Dispute

1. *The Complaint Does Not Allege A Significant Impact On Labor-Management Relations*

In determining jurisdiction under Section 301, the lower courts have properly focused upon the factual allegations contained in the complaint. *Baker, supra*, 628 F.2d at 164; *Alexander, supra*, 624 F.2d at 1239; *Studio Electrical Technicians, supra*, 598 F.2d at 553; *Stelling, supra*, 587 F.2d at 1384; *Local Union No. 657, supra*, 552 F.2d at 1255 n.8; *1199 D.C., supra*, 533 F.2d at 1208. Because the instant case reached the federal court upon removal from state court pursuant to 28 U.S.C. § 1441 (J.A. 52-53), the propriety of the district court's assertion of jurisdiction must be determined solely by reference to the four corners of the complaint.[39] *Phillips Petroleum Co. v. Texaco, Inc.*, 415 U.S. 125, 127-128 (1974).

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[39] The United Association's references to materials *not* part of or attached to Local 334's complaint (J.A. 21-46, 54-65) are therefore *irrelevant* to the propriety of the decision below denying jurisdiction. Examples of citations to such irrelevant materials include reference to the Affidavit of Martin J. Ward (J.A. 85-86) at page 4 of its Brief; reference to the Order to Show Cause issued by the United States District Court below (J.A. 66-67) cited at page 7 of its Brief; and reference to Exhibit C to Craner Affidavit (J.A. 142-143) at page 28 of its Brief. The Court should disregard these citations and any others to material in the Joint Appendix not relevant to the issue at hand.

The Complaint reveals the gravamen of the dispute to be whether or not the General President of the United Association exceeded the authority or abused the discretion granted him by the United Association constitution in ordering a consolidation of several New Jersey local unions, including Local 334, into two successor locals (J.A. 58, 61). As consequences of the General President's allegedly unconstitutional order of consolidation, Local 334's Complaint avers that its members would lose "rights and privileges" under the Constitution, that the membership of Local 334 would "be deprive[d] of work opportunities," and that they would suffer financial losses which are "impossible to calculate." (J.A. 59-60). Finally, the Complaint alleges that the ordered consolidation would cause "irreparable injury to the property rights of the members" of Local 334 because the Local would be required to surrender its assets, a "great portion" of which consist of realty, to be divided among the successor locals (J.A. 60).

In its answer, the United Association denied that the provisions of the constitution had been violated, denied that its order of consolidation would have the consequences alleged by Local 334, and denied that Local 334 had fully exhausted its internal union remedies. The United Association affirmatively asserted in its defense that it "has, in the consolidation, fully adhered to the provisions of the Constitution . . . [and] has not breached any contractual obligation" to Local 334. Thus both Local 334's allegations and the defenses asserted by the United Association, which focus squarely upon interpretation of the provisions of the union constitution, demonstrate that this case presents a mere *internal* union dispute. *Studio Electrical Technicians Local 728*, *supra*, 598 F.2d at 553; *Stelling*, *supra*, 587 F.2d at 1384.

The pleadings do not contain even general or conclusory allegations that "a threat to industrial peace"

would result from the alleged violation of the United Association constitution or that the order of consolidation would have "a significant impact upon labor-management relations." The court below properly realized that, in determining whether or not jurisdiction exists under Section 301(a), "the complaint is the crucial document," and concluded that "any impact on labor-management relations" from the instant dispute as to the interpretation of the constitution "would be minimal." (Pet. 15a, 16a.)

The United Association's criticism of the court of appeals' analysis of the complaint is unfounded. The United Association argues first that the change in Local 334's job referral system, alleged in the complaint as a necessary consequence of the order of consolidation, supplies the impact required for Section 301 jurisdiction. But, as the court below observed, the referral lists in question "are an *internal* union device for assigning work opportunities" rather than a term or condition in a collective bargaining agreement with employers (Pet. 16a, emphasis supplied). Even if the referral system were incorporated into a collective bargaining agreement, however, the same conclusion would be required. "[T]he fact that the situs of the alleged union wrongdoing [is] the bargaining table does not alter the intra-union nature of the alleged misconduct" (*Baker, supra*, 628 F.2d at 163-164), especially in the absence of even a general or conclusory allegation that "any employer was confronted with the dilemma of choosing between competing factions of the same union . . ." and therefore was "forced to make untenable choices concerning union representation" *1199 D.C., supra*, 533 F.2d at 1208; *Studio Electrical Technicians Local 728, supra*, 598 F.2d at 553-554.

Equally without merit is the United Association's argument with respect to the alleged "displacement by two

new local unions of the one local which had been a party to collective bargaining" with area employers (Br. at 28). Again, the Complaint contains no concrete and specific allegation of impact upon labor-management relations or threats to industrial peace. In fact, the Complaint makes no reference at all to the displacement of Local 334 as bargaining agent by other local unions, notwithstanding the United Association's belated attempt to supplement the allegations in the Complaint (Br. at 28; J.A. 142).

2. *Section 301 Jurisdiction Cannot Be Predicated Upon An Internal Union Dispute's "Potential" Impact On Labor-Management Relations*

Indeed, by the tenor of its argument, the United Association implicitly concedes that the complaint lacks the requisite allegations of actual "impact" required to establish jurisdiction under Section 301. Thus, the United Association argues that "any change in the existing referral system *can* impact upon the employer" and that "the consolidation of locals . . . is simply the union-side equivalent of the corporate merger and its *potential* for effect on labor-management relations is no less great." (Br. at 28, 29; emphasis supplied). However, the decisions of the lower courts have not asserted jurisdiction merely because of a "potential" for industrial strife or "potential" impact on labor-management relations. *See supra*, p. 31.

The United Association's reliance upon the circuit court decisions in *National Association of Letter Carriers v. Sombrotto*, 449 F.2d 915 (2d Cir. 1971), *Local 1219 Carpenters v. Carpenters*, 493 F.2d 93 (1st Cir. 1974) and *Local 657 Carpenters v. Sidell*, 552 F.2d 1250 (7th Cir. 1977) is misplaced. Each of these cases presented a controversy under a union constitution which caused "traumatic industrial and economic repercussions"

(*Parks v. IBEW, supra*) and which, unlike the present case, fit within the Congressional policy of providing a federal forum for enforcement of agreements "significant to the maintenance of labor peace." *Retail Clerks v. Lion Dry Goods, Inc., supra.*

In *Sombrotto,* the international union sued to enforce a trusteeship imposed upon an unwilling local union to prevent a strike by the local union of public employees that would have been both unlawful and in violation of the union constitution. 449 F.2d at 917. Because of the imminence of the illegal strike, jurisdiction under Section 301 could have been found under the most narrow reading of the statute.

Local 1219 involved a jurisdictional dispute between a millwright local and several sister carpenter locals within the same national union. The millwright local brought suit against the national union under Section 301 alleging essentially that the international had failed to enforce a jurisdictional award in favor of the millwrights and against the carpenter locals. In evaluating the propriety of asserting Section 301 jurisdiction, the courts noted that the carpenter locals "vehemently opposed the formation of the millwright's union" and, further, that the underlying jurisdictional dispute led to the filing of unfair labor practice charges by one of the affected employers. *Local 1219, Carpenters v. Carpenters,* 314 F.Supp. 148, 149-150 (D. Me. 1970), *aff'd,* 493 F.2d 93 (1st Cir. 1974). Thus, although the First Circuit, like the Second Circuit in *Sombrotto,* purported to interpret Section 301 "literally" and without reference to the underlying complaint, the character and breadth of the jurisdictional controversy, and particularly the active involvement of an employer in the dispute, strongly suggests that the application of the prevailing narrow jurisdictional standard would not change the First Cir-

cuit's result. Of course, these same factors clearly distinguish the actual impact in *Local 1219* from the "potential" impact which the United Association extrapolates from the instant Complaint.

Local 657 provides even less support for the assertion of jurisdiction in this case. Relying upon *1199 D.C.*, the Seventh Circuit expressly adopted the prevailing narrow view of Section 301 jurisdiction. The complaint in *Local 657* contained an express allegation that "stable and harmonious relationships" with employers would be subjected to "immeasurable harm." *Supra*, 552 F.2d at 1255. Although asserting jurisdiction under Section 301, the Seventh Circuit cautioned "that a federal court should be chary of extending the scope of Section 301(a) to comprehend federal court involvement in the control and supervision of purely internal union affairs." *Id.* The Complaint in this case contains no allegation of interruption of "stable and harmonious relationships with employers," as the United Association in fairness must concede. Accordingly, a comparison of this case with *Sombrotto, Local 1219* and *Local 657*, demonstrates the obvious lack of any threat to industrial peace in the present case and highlights the superficiality of the United Association's contention that this case involves a significant impact upon labor-management affairs.

Thus, the "impact" standard of jurisdiction which the United Association seeks to impose under Section 301 is, in reality, no standard at all. The Complaint contains no such allegations, and a characterization of this case as presenting the requisite "impact" would require lower courts to engage in the same kind of generalized, speculative, and factually unfounded construction of complaints reflected in the United Association's argument. If all that need be shown to obtain jurisdiction under Section 301 is that the underlying dispute "may" or "can" affect

labor-management relations or has the "potential" to do so, each of the previous circuit court decisions denying jurisdiction was incorrectly decided. "[T]his line of reasoning would include practically every [internal dispute] within the ambit of Section 301, since ultimately practically all union activity will have some impact in the labor-management area." *Alexander, supra,* 624 F.2d at 1239.[40] The expansive definition of "impact" urged by the United Association would open the federal courts to a wide variety of internal union disputes with indirect and marginal effects upon labor-management relations. Assuming, *arguendo,* that Section 301(a) extends federal jurisdiction over any suit alleging a violation of a union constitution, we urge the Court to apply a restrictive standard under which the federal judiciary may consider only disputes having a "traumatic" impact on labor-management relations. This is not such a case.

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[40] Even where the lower courts have refused to assert jurisdiction, the courts could have found the "potential" for impact upon labor-management relations or for industrial strife. *Baker, supra,* 628 F.2d at 162 (alleged violation of union constitution in negotiating collective bargaining agreement); *Alexander, supra,* 624 F.2d at 1239 (negotiation of project agreement); *Studio Electrical Technicians Local 728, supra,* 598 F.2d at 552 (resolution of jurisdictional dispute); *Stelling, supra,* 587 F.2d at 1382 (negotiation of collective bargaining agreement); *Trail, supra,* 542 F.2d at 964-965 (negotiating collective bargaining agreement); *1199 D.C., supra,* 533 F.2d at 1206 (merger of local unions); *Smith v. United Mine Workers, supra,* 493 F.2d at 1242 (merger of districts within union).

CONCLUSION

For the reasons stated herein, the judgment of the Court of Appeals should be affirmed.

Respectfully submitted,

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SUPPLEMENTAL APPENDIX

STATE	ENFORCEABILITY OF UNION CONSTITUTION	EXHAUSTION OF INTERNAL REMEDIES	JUDICIAL DEFERENCE TO UNION INTERPRETATION
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Alaska	Born v. Cease 13 Alas. 518, 101 F. Supp. 473 (1951), aff'd, 15 Alas. 60, 213 F. 2d 407 (9th Cir. 1952), cert. denied, 348 U.S. 855	Born v. Cease 13 Alas. 518, 101 F. Supp. 473, 475 (1951)	
Arizona	Locomotive Engineers v. Mills 43 Ariz. 379 31 P. 2d 971, 986 (1934)		Locomotive Engineers v. Mills 43 Ariz. 379 31 P. 2d 971, 987-988 (1934)
Arkansas	Love v. Locomotive Engineers 139 Ark. 375 215 S. W. 602 (1918)		Love v. Locomotive Engineers 139 Ark. 375 215 S. W. 602, 605 (1918)
California	McConville v. Milk Wagon Drivers 106 Cal. App. 696 289 P. 852 (1930)	Greenwood v. Building Trades Council 71 Cal. App. 159 233 P. 823, 826 (1925)	McConville v. Milk Wagon Drivers 106 Cal. App. 696 289 P. 852, 853 (1930)
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STATE	ENFORCEABILITY OF UNION CONSTITUTION	EXHAUSTION OF INTERNAL REMEDIES	JUDICIAL DEFERENCE TO UNION INTERPRETATION
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Florida	Stanton v. Harris 152 Fla. 736 13 So.2d 17 (1943)	Stanton v. Harris 152 Fla. 736 13 So.2d 17, 18 (1943)	Stanton v. Harris 152 Fla. 736 13 So.2d 17 (1943)
Georgia.	Holmes v. Brown 146 Ga. 402 91 S.E. 408 (1917)	Holmes v. Brown 146 Ga. 402 91 S.E. 408, 409 (1917)	Walker v. Locomotive Engineers 186 Ga. 811 199 S.E. 146, 151-152 (1938)
Hawaii			

STATE	ENFORCEABILITY OF UNION CONSTITUTION	EXHAUSTION OF INTERNAL REMEDIES	JUDICIAL DEFERENCE TO UNION INTERPRETATION
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Illinois	Fichter v. Milk Wagon Drivers 382 Ill. 91 46 N.E.2d 921 (1943), cert. denied, 319 U.S. 758	Engel v. Walsh 58 Ill. 98 101 N.E. 222, 224 (1913)	Evans v. Johnston 300 Ill. App. 78 20 N.E.2d 841, 849 (1939) cert. denied, 309 U.S. 662
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STATE	ENFORCEABILITY OF UNION CONSTITUTION	EXHAUSTION OF INTERNAL REMEDIES	JUDICIAL DEFERENCE TO UNION INTERPRETATION
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Maine	Flaherty v. Portland Longshoremen's Benev. Soc. 99 Me. 253 59 A. 58 (1904)		
Maryland	Baltimove Lodge No. 405 v. Machinists 134 Md. 355 106 A. 692 (1919)	Baltimore Lodge No. 405 v. Machinists 134 Md. 355 106 A. 692, 693 (1919)	Long v. Baltimore & O.R. Co. 155 Md. 265 141 A. 504, 509 (1928)
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No. 80-710

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, AFL-CIO, *et al.*,

Petitioners,

v.

LOCAL 334, UNITED ASSOCIATION ETC., *et al.*,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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REPLY BRIEF FOR PETITIONERS [1]

In *Retail Clerks* v. *Lion Dry Goods*, 369 U.S. 17, the respondent argued that the term "contracts" as used in

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[1] Throughout this Reply the following abbreviations will be used: "Pet. Br." will refer to the Brief of Petitioners in this case; "Resp. Br." will refer to the Brief for Respondent; "J.A." will refer to the Joint Appendix; "Pet. App." will refer to the Appendix to the Petition for Certiorari; "LMRA" will refer to the Labor Management Relations Act of 1947, and "NLRA" will refer to the National Labor Relations Act, which was amended by Title I of the LMRA; "Leg. Hist." will refer to the Legislative History of the Labor-Management Relations Act of 1947. (G.P.O. 1948)

the first clause of § 301(a) of the LMRA should be read to mean "collective-bargaining contracts." (See *id.* at 25.) This Court, noting that the "words of § 301(a) require no such narrow construction as is suggested; rather, they negate it" (*id.*), unanimously rejected that interpretation of § 301(a). (See *id.* at 25-28.)

Respondent in this case, embracing a position accepted by only one of the ten Courts of Appeals which have considered the present question,[2] presents a parallel argument for limiting the word "contracts" in the second clause of § 301(a). Respondent contends that contracts means "agreements between *unrelated* labor organizations" (Resp. Br. 21, emphasis in original); *viz.*, labor organizations which are not affiliated with the same "national or international labor organization" (cf. § 10(c) of the NLRA, referred to at Pet. Br. n. 6). But the second clause of § 301(a) is not limited to agreements between "*unrelated*" labor organizations; the statutory language refers to contracts "between *any such* labor organizations" (emphasis added) (*viz.*, any "labor organization[s] representing employees in an industry affecting commerce as defined in this Act").

As respondent recognizes throughout its argument (with the exception of one sentence in one footnote),[3]

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[2] *Smith* v. *United Mine Workers of America*, 493 F.2d 1231 (10 Cir.) discussed at Pet. Br. 20-21, 22-23.

[3] At Resp. Br. 14-15, n. 10, it is declared to be "at least arguable that a union constitution is not a 'contract between labor organizations.'" on the ground that "in 1947 Congress considered a union constitution primarily to be a contract between members and their union and only secondarily to be a contract between affiliated bodies of a labor organization". Even if respondent's primary-secondary dichotomy were for some reason accepted, the conclusion drawn would not follow. A union constitution is a "contract between labor organizations" insofar as it is recognized to be even "secondarily" a "contract between affiliated bodies of a labor or-

when § 301(a) was enacted in 1947 a national constitution was understood to be a contract under both federal and state law. Moreover, it is common ground that the second clause of § 301(a), which is at issue here, was inserted in the Act without clarifying explanation. We believe that under "the fundamental canon of statutory construction, * * * that unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common meaning" (*Perrin* v. *United States*, 447 U.S. 37, 42), it follows that the term "contract" in that clause includes national constitutions.

1. Finding support for its view in neither the language nor the legislative history of the provision to be construed, respondent instead invokes "the principle of *stare decisis*" (Resp. Br. 9).

Respondent would sweep all the chessmen off the table by asserting that the present case is controlled by no less than three prior decisions of this Court: *Machinists* v. *Gonzales*, 356 U.S. 617 (1958); *Motor Coach Employees* v. *Lockridge*, 403 U.S. 273 (1971); and *NLRB* v. *Boeing Co.*, 412 U.S. 67 (1973). This assertion will doubtless

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ganization", where those affiliated bodies are themselves "labor organization".

It is unclear whether respondent denies that the *Coronado* cases recognized a union constitution to be a contract between labor organizations. Of course a union, like any group of individuals is, as Chief Justice Taft there stated, an "association of men." But the very point at issue in the passage quoted in Pet. Br. 16 was whether the International and its affiliated bodies, specifically its Districts, were to be treated as one organization, or an affiliated group of organizations. That question was answered by looking to the relationship between the International and Districts stated in the national constitution, just as the relationship between two corporations is determined by their articles of incorporation and supporting documents, which also govern the rights of shareholders.

come as a surprise to the Courts of Appeals which, while reaching divergent results, have uniformly considered the jurisdictional issue presented to be an open one in this Court.[4] Not one of the opinions of these courts so much as entertains the possibility that *Gonzales*, *Lockridge* or *Boeing* decide the present issue. Even the Tenth Circuit, which cited (and thereby declared its awareness of) *Gonzales* (see 493 F.2d at 1243, quoted at Pet. Br. 20-21) did not rely on that case as a precedent in holding that there is no jurisdiction over disputes between a parent organization and a local union.

This is not an instance where, as in Poe's *The Purloined Letter*, the true situation is so obvious that it has escaped everyone's attention. Rather, the true situation is that the decisions cited by the respondent do not address the present question at all, but differ from the present case in two distinct and independent decisive ways: None of the three cases so much as considered the question of whether a union constitution is a "contract" for purposes of § 301(a). Indeed, *Gonzales* and *Boeing* do not even mention § 301. And while *Lockridge* did discuss § 301(a) jurisdiction, the Court did not, as respondent avers, "consider[] and reject[] the argument, made here by the United Association, that Section 301 provides subject matter jurisdiction for suits alleging a breach of the union's constitution" (Resp. Br. 11); indeed, the Court did not address the second clause of § 301(a) at all. Rather, the Court reaffirmed that the first and more familiar clause of § 301(a) grants jurisdiction over suits by individual union members against their employers for breach of a promise in a collective

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[4] Nor did respondent in its Brief in Opposition to the Petition for Certiorari contend that the jurisdictional issue raised by the petition had already been decided by this Court; indeed, that brief did not mention any of the cases which respondent now says are controlling precedents.

bargaining agreement, and against the union for breach of the duty of fair representation. The arguments which the Court "considered and rejected" (*id.*) were that plaintiff Lockridge could obtain relief under either of those theories. (See 403 U.S. at 298-300.)

2. Respondent's argument from policy that our reading of § 301(a) is inconsistent with the congressional desire not to interfere with internal union affairs—like its argument from precedent—rests on the erroneous premise that § 301(a) jurisdiction over national constitutions would permit suits in federal courts over disputes concerning members' rights and obligations stated in such a constitution. Respondent itself reveals the flaw in that premise:

> Under [the contract] theory, the constitution contains a contract between the members *inter se*, between each member and the union *and* between the various bodies of the union. [Resp. Br. p. 14, n. 10 emphasis in original.][5]

In other words, normally the provisions of a national constitution create two distinct types of contracts—a contract between the national union and the local unions defining the rights and obligations of those organizations, and a contract between members and the national, defining the members' rights and obligations. Thus, in contrast with the normal collective bargaining agreement, which is a single contract betwen two parties (the employer and the union) which creates and defines both the parties' rights and obligations and the rights and obligations of third persons who are not parties to the contract (the employees), a national constitution is a complex of

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[5] In *Harris* v. *Geier*, 112 N.J. Eq. 99, 104-105, 164 A. 50, 52 cited by respondent, the Court said:

> The constitution and by-laws of the International Brotherhood constitute a contract between the members of Local 461 inter sese, and between them and the general body of membership of the brotherhood, and between the local and the joint council and other agencies of the brotherhood.

contracts between organizations *inter se* and between organizations and individuals. In this respect a national constitution is like the special collective bargaining situation noted in *J. I. Case Co.* v. *Labor Board*, 321 U.S. 332, 338: "Of course, where there is great variation in circumstances of employment or capacity of employees, it is possible for the collective bargain to prescribe only minimum rates or maximum hours or expressly to leave certain areas open to individual bargaining". Where that option is exercised, the employment relation is governed not by a single contract—the collective agreement between the employer and union—but by two contracts read in conjunction—the collective agreement and the contracts between the employer and the individual employee.

The language of § 301(a) thus demonstrates that the 1947 Congress had not reached the point of providing federal jurisdiction over suits for violation of a contract between an employer and an employee (which therefore remains governed by state law) or over suits for violation of contract between a labor organization and a member. Rather, § 301(a) is limited to suits based on contracts between an employer and a labor organization and between labor organizations. That is why the *Gonzales* Court stated that "[t]he protection of union members in their rights as members has not been undertaken by federal law, and indeed the assertion of any such power has been denied" (356 U.S. at 620), and the *Scofield* and *Boeing* Courts added that "the regulation of the relationship between union and employee [-member] is a contractual matter governed by local law." (394 U.S. 423 at 426, n. 3; 412 U.S. 67 at 76-77).

That, too, is why, as the Court noted in *NLRB* v. *Allis-Chalmers Mfg. Co.*, 388 U.S. 175, 193, the Labor-Management Reporting and Disclosure Act of 1959 was "the first comprehensive regulation by Congress of internal union affairs." But the acknowledged fact (see Pet. Br. 23-25) that the Taft-Hartley Act was not a

comprehensive regulation of internal union affairs does not prove that the 1947 Congress left that subject untouched. That the Taft-Hartley Act began the process of federal regulation of internal union affairs is sufficiently shown, we believe, by the citation of §§ 9(f), (g), & (h), the provisions requiring unions to file with the National Labor Relations Board "non-communist" affidavits and certain financial information and this Court's construction of § 8(b)(1)(A) in *Scofield, supra,* and *NLRB* v. *Granite State Joint Board,* 409 U.S. 213, and of § 8(b)(1)(B) in *American Broadcasting Cos.* v. *Writers Guild,* 437 U.S. 411.

To be sure, as we recognized in our opening brief, "the reluctance of the Courts of Appeals to read § 301(a) as permitting interference in internal union affairs is not wholly unjustified." (Pet. Br. 23.) The Taft-Hartley Act's language, evolution and legislative history all show a disinclination by Congress to engage in substantive regulation of union affairs. But as we demonstrated in that brief, even as "Congress considered the judicial enforcement of contracts between employers and union to be entirely consistent with the right of these parties to make voluntary decisions as to the terms of these contracts", so too, "judicial enforcement under § 301(a) of union Constitutions * * * is entirely consistent with the Congressional judgment that union members should remain free to decide what the provisions of their Constitution shall be." (Pet. Br. 25.) The analysis which led to this conclusion is not mentioned, let alone rebutted in respondent's brief, although our opening brief squarely addressed the policy against regulation of internal affairs on which respondent essentially stakes its entire case.

In short, Congressional caution in regulating internal union affairs cannot be the basis for denying fair effect to what the language of § 301(a) shows Congress chose to do. The "overall legislative history of the Taft-Hartley

Act" (Resp. Br. 16) does counsel against reading § 301(a) expansively to add what is not there—federal jurisdiction over suits based on contracts between unions and members. But that history does not support reading § 301(a) so narrowly as to erase what is fairly encompassed in its terms—federal jurisdiction over suits based on contracts between labor organizations, whether those organizations are related or unrelated.

3. In rebutting respondent's overreading of the Congressional policy concerning internal union affairs, we do not wish to mislead in the opposite direction. In *Smith* v. *Evening News Assn.*, 371 U.S. 195, 200-201, the Court rejected the suggestion that "the word 'between' [in the first clause of § 301(a)] refers to 'suits', not 'contracts' and therefore only suits between unions and employers are within the purview of § 301", and held that "suits by employees for breach of a collective bargaining contract * * * arise [] under § 301." The *Smith* Court in reaching its conclusion noted, "[t]he rights of individual employees concerning rates of pay and conditions of employment are a major focus of the negotiation and administration of collective bargaining contracts" (*id.* at 200) and "[r]espondent does not argue here and we need not consider the question of federal law of whether [an employee] under this contract, has standing to sue for breach of the no-discrimination clause nor do we deal with the standing of other employees to sue upon other classes in other contracts" (*id.* at 201).[6] Thus it

[6] The result in *Smith* thus accords with the union's role as the employee's statutory representative in negotiating a collective agreement. It is also in accord with the common law, which through the third-party beneficiary doctrine, has long permitted non-signatories to sue on, as opposed to being sued on, a contract. Cf. *J.I. Case Co., supra*, 321 U.S. at 336. As of 1947 many state courts allowed employees to sue their employer to enforce individual rights under collective agreements. See the cases and other authorities cited in *Employees* v. *Westinghouse Corp.*, 348 U.S. 437, 460, n. 29 (Opinion of Frankfurter, J.).

is an open question whether, under the reading of § 301 we urge, suits by members on contracts between labor organizations would lie. But the resolution of that question one way or the other would not extend the substantive scope of the federal jurisdiction nor would it permit suits on the separate contracts between the members and the union.

4. (a) Respondent argues "[s]tate courts were generally available in 1947 to enforce the provisions of a union constitution. [Thus i]n contrast to collective bargaining agreements, the enforceability of a union constitution was 'not a part or parcel of the abuses against which' Section 301 was aimed". (Resp. Br. 15.) Respondent misunderstands those "abuses" and the state law in existence at that time. The section of the Senate Report entitled "Enforcement of Contract Responsibilities" goes on from the passage quoted by respondent to explain the exact scope of the problems:

> The initial obstacle in enforcing the terms of a collective agreement against a union which has breached its provisions is the difficulty of subjecting the union to process. The great majority of labor unions are unincorporated associations. At common law voluntary associations are not suable as such (*Wilson* v. *Airline Coal Company*, 215 Iowa 855; *Iron Molders' Union* v. *Allis-Chalmers Company*, C. C. A. 7, 166 F. 45). As a consequence the rule in most jurisdictions, in the absence of statute, is that unincorporated labor unions cannot be sued in their common name (*Grant* v. *Carpenters' District Council*, 322 Pa. St. 62). Accordingly, the difficulty or impossibility of enforcing the terms of a collective agreement in a suit at law against a union arises from the fact that each individual member of the union must be named and made a party to the suit.
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> * * * *
>
> Even where unions are suable, the union funds may not be reached for payment of damages and

> any judgments or decrees rendered against the association as an entity may be unenforceable. (See *Aalco Laundry Co. v. Landry Linen Union*, 115 S. W. 2d 89 Mo. App.) However, only where statutes provide for recognition of the legal status of associations do association funds become subject to judgments (*Deeney* v. *Hotel & Apt. Clerks' Union*, 134 P. 2d 328 (1943), California). [1 Leg. Hist. 422-423.]

The Report was careful not to overstate the dimensions of that difficulty:

> The laws of *many* States make it *difficult* to sue *effectively* and to *recover a judgment* against an unincorporated labor union. It is *difficult* to reach the funds of a union to satisfy a judgment against it. In *some* States it is necessary to serve *all* the members before an action can be maintained against the union. This is an almost impossible process. [1 Leg. Hist. 421, emphasis added.]

This reasoning applies fully to the subject covered by § 301(a)'s second clause, added to the provision thereafter. None of the cases cited by respondents suggest that employer suits against a union and suits by one union against another are legally distinct in the sense that the obstacles that "make it difficult [for employers] to sue effectively and to recover a judgment against an unincorporated labor union" did not apply to suits by a union.

Indeed, at least two of the suits respondent cites in the first column of its supplemental appendix were brought on both a collective bargaining agreement and a union constitution. (See *Locomotive Engineers* v. *Mills*, 43 Ari. 379, 31 P. 2d 971; *Lockwood* v. *Chitwood*, 89 P. 2d 951 (Okla.).) Moreover, others of those cases show that the difficulties of suing under a union constitution were the same as described in the Senate Report. (See *Simpson* v. *Locomotive Engineers*, 83 W. Va. 168, 98 S.E. 580, 584 (1919), *cert. denied* 250 U.S. 644.)

(b) In apparent recognition that national constitutions are by all odds the most important category of agreements between labor organizations, respondent seeks to provide soothing reassurance as to what its argument leaves of § 301(a)'s second clause:

> Whatever decision the Court renders in this case, Section 301(a) will continue to provide a jurisdictional basis for the enforcement of a variety of contracts or agreements between *unrelated* labor organizations: no raid agreements, jurisdictional dispute resolution agreements, merger or affiliation agreements, and promissory notes on loans between previously unrelated organizations. [Resp. Br. 21, footnotes omitted, emphasis in original.]

This suggested line of demarcation raises a more difficult question of principle than it solves.

National constitutions, in addition to their many other functions, are designed to achieve within the national union the same beneficial result brought about by no-raid agreements, jurisdictional dispute resolution agreements and merger agreements between unrelated unions. The point of the provisions of such constitutions establishing local union territorial and work jurisdictions and stating the criteria for creating new locals and merging existing ones is to provide a system of law to solve potential problems between the most likely class of disputants—local unions affiliated with a national union that represents the same or closely related groups of workers. This very case illustrates that point: the order of consolidation here allocated jurisdiction over plumbing and pipefitting work in the state of New Jersey between petitioner Local 14, representing plumbers, and Local 274, representing pipefitters. Moreover, whereas previously the various locals in that state had been confined in their geographical jurisdiction (for example, respondent had exclusive jurisdiction over work in Morris County, New Jersey, see Pet. Br. 5-6); one of the ob-

jections in its amended complaint is precisely that its members "will have to compete in the territory of Morris County with a large group of journeymen * * *" (J.A. 60, quoted at Pet. Br. 6).[7] See also the provision of Carpenters' constitution quoted in *Sidel*, n. 7, *infra*, 552 F.2d at 1256.

Thus, respondent attributes to Congress an entirely idiosyncratic intent—to cover in § 301(a) the relatively rare no-raid, jurisdictional dispute and merger agreements between unrelated labor organizations in order to remove the impediments Congress identified to enforcement of such agreements, while leaving untouched the multitude of agreements on the same subjects between related labor organizations embodied in national constitutions. To state respondent's point is to refute it. Moreover, in light of the role of national constitutions in ordering the relationships between national unions and their locals and between the affiliated locals, respondent's acknowledgement that § 301(a) does cover agreements on such subjects as raiding, jurisdiction and merger provides strong support for our contention that the section should be read to mean what it says—that the federal courts have jurisdiction over suits on contracts between labor organizations whether those organizations are related or unrelated.[8]

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[7] Likewise, at least four of the cases cited in Respondent's Brief involve an international union's determination of the respective work jurisdictions of its locals: *Local Union 1219, United Brotherhood of Carpenters and Joiners* v. *United Brotherhood of Carpenters and Joiners*, 493 F.2d 93 (1 Cir.); *Local Union No. 657, United Brotherhood of Carpenters and Joiners* v. *Sidell*, 552 F.2d 1250 (7 Cir.), *cert. denied*, 434 U.S. 862; *Studio Electrical Technicians Local 728* v. *International Photographers of the Motion Picture Industries Local 659*, 598 F.2d 551 (9 Cir.); *Dycus* v. *NLRB*, 615 F.2d 820 (9 Cir.).

[8] While two Circuits have concluded that the exercise of jurisdiction over suits between labor organizations on a union consti-

5. Contrary to Resp. Br. 16, n. 14, our opening brief did not suggest that the relationship between § 301 and § 8 be "ignore[d]"; we urged only that it not be misunderstood or exaggerated.[9] One of the cases cited, *id.*, *Howard Johnson Co.* v. *Hotel Employees*, 417 U.S. 249, 255-256, well illustrates their proper relationship: In fashioning the federal common law of labor agreements "from the policy of our national labor laws" (*Textile Workers* v. *Lincoln Mills*, 353 U.S. 448, 456), the courts must consider, *inter alia*, the policies of § 8 of the NLRA. Thus, in *Howard Johnson*, the Court effectuated the policy of the NLRA, embodied particularly in § 8(d),

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tution would require that suits by members for violation of the national constitution also be allowed (Resp. Br. 24) the Sixth Circuit has reached the opposite conclusion, expressly holding that it is not compelled by *Smith*. (*Trail* v. *International Brotherhood of Teamsters, Etc.*, 542 F.2d 961, 967 (6 Cir.).) That, as we show herein, is the correct view of § 301(a). We note also that neither of the Courts of Appeals whose decisions are cited at Resp. Br. 24 adopted the construction of § 301(a) for which respondent contends.

[9] None of the cases cited at Resp. Br. 16, n. 14 limit the scope of § 301 jurisdiction on the basis of the policies embodied in § 8; indeed, to do so would be contrary to the Congressional decision to leave the enforcement of contracts to the "usual process of the law" (see Pet. Br. 24) and to the decisions of this Court which, implementing that policy, have sustained jurisdiction under § 301 even in the face of potential overlap or conflict with the NLRB. That is the purport of the passage from *William E. Arnold Co.* v. *Carpenters*, 417 U.S. 12, 17-18, cited at Resp. Br. 16, n. 14 and the point that was decided in *Smith* v. *Evening News Assn.*, *supra*, 371 U.S. at 197-198 and in *Carey* v. *Westinghouse Corp.*, 375 U.S. 261, cited at Resp. Br. 26. Respondent's brief at pp. 25-26 thus draws from *Carey* the opposite conclusion from what that case actually decided when it argues that it would be paradoxical to allow jurisdiction over suits between affiliated labor organizations which have an impact on labor-management relations because the judiciary may not resolve matters subject to the NLRB's "superior authority" (cf. 375 U.S. at 272).

against governmental interference with the terms of agreements between employers and unions, see 417 U.S. at 254-256. As we observed at Pet. Br. 25, that policy does not call for a narrowing of the courts' undoubted jurisdiction under the first clause of § 301(a); rather, it militates against construing agreements (in the exercise of such jurisdiction) to create rights and obligations for which the parties did not bargain. (See also *Carbon Fuel Co.* v. *Mine Workers*, 444 U.S. 212, 218-219, cited *id.*) Applying the same approach in declaring the federal common law in the exercise of jurisdiction under the *second* clause of § 301(a) the courts would properly look to the policy embodied in the § 8(b)(1)(A) proviso against interference in internal union affairs. That policy would be furthered "by recognizing the principle of judicial deference to an interpretation fairly placed upon union rules by the union's authorized officials." (Resp. Br. 27.) Indeed, the federal courts (like the state courts whose decisions are cited in the third column of Respondent's Supplemental Appendix) are already following that principle, even without the need to invoke § 8(b)(1)(A)'s proviso.[10]

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[10] See, *e.g.*, *English* v. *Cunningham*, 282 F.2d 848, 850 (D.C. Cir.); *Vestal* v. *Hoffa*, 451 F.2d 706, 709 (6 Cir.), *cert. denied*, 406 U.S. 934; *Local Union No. 657, etc.* v. *Sidell*, 552 F.2d 1250, 1256-1257 (7 Cir.), *cert. denied*, 434 U.S. 862; *Stelling* v. *IBEW*, 587 F.2d 1379, 1388 (9 Cir.), *cert. denied*, 442 U.S. 944; *Drywall Tapers* v. *Operative Plasterers*, 601 F.2d 675, 679 (2 Cir.), *cert. denied*, 444 U.S. 1073.

6. For the foregoing reasons and those stated in our opening brief, the judgment of the Court of Appeals should be reversed.

Respectfully submitted,

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